

December 13, 2005



TRANSCRIPT
December 13, 2005

MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez,	Steven A. Silverman
Michael Subin	

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1 Council President Leventhal,
2 Good morning, ladies and gentlemen.

3
4 Multiple Speakers,
5 [INAUDIBLE]

6
7 Council President Leventhal,
8 Do we have Associate Pastor Rebecca Brillhart here? Great we're going to begin with a
9 invocation. Pastor Brillhart please.

10
11 Pastor Rebecca Brillhart,
12 Let us pray together. Holy and gracious God, as the warmth and color of fall have
13 transitioned into the crisp cold of winter, we give our thanks forever season of our lives
14 and for the possibilities this new day brings. In this moment of quiet, speak to us from
15 the well of your love and grace. Bring us gently into your healing presence. As public
16 servants and concerned citizens, we pray this day for all who have a song they cannot
17 sing, or a dream that is waited away. For all who have a burden they cannot bear, live in
18 chains they cannot break, who wander homeless and cannot return. We pray for those
19 who are sick and hurt, and for those who tend them. We pray for those who wait for
20 loved ones and wait in vain. For those who live in hunger, for those who will not share
21 their bread. For those who are misunderstood and for those who misunderstand. We
22 pray for those who are captive and those who are captors. For those whose words are
23 locked in their hearts and those who yearn to hear those words, have mercy on these,
24 God, and have mercy on us all this morning. Give us the focus and courage to be your
25 faithful people in our homes, jobs, neighborhoods and with one another. Give us big
26 hearts, big enough to embrace all of our sisters and brothers not only in this holiday
27 season but in every season. And help us to reach out again and again wherever and
28 whenever your love needs to be found. May your grace make possible what seems
29 impossible to us. Amen.

30
31 Council President Leventhal,
32 Amen. Thank you very much. Announcements Ms. Lauer?

33
34 Linda Lauer,
35 Good morning. The first thing is the Council is ready to announce the public hearing
36 dates for the FY'07 capital budget and CIP. Those dates are February 7, 8, and 9th at
37 7:00 p.m. The District Council -- Let's see the first thing -- On the Consent Calendar we
38 have an additional item. It's on for introduction, suspension of rules, and action. It's a
39 resolution to request Park and Planning to go develop a plan for purchase of Uncle Tom
40 Cabin's property sponsored by Councilmember Floreen. In District Council -- Pardon?

41
42 Councilmember Praisner,
43 And Praisner.

44
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Councilmember Floreen,
Last minute.

Linda Lauer,
Thank you, and Praisner, we'll make that change. On the District Council session,
Agenda Item 4 which is the introduction of Zoning Text Amendment 05-22, to Transit
Station Zones. We have additional sponsor. It's sponsored by Councilmember Denis
and Perez. Introduction -- a new Subdivision Regulation Amendment, 05-05, Planning
Board Actions Enforcement sponsored by the District Council. That will go to public
hearing on January 17th at 7:00. And another Subdivision Regulation 05-06 for
introduction, Subdivision Site Plans Coordination with Other Agencies, sponsored by
Councilmember Silverman. That is for public hearing on January 17th at 7:00, as well.
And the legislative session, change in the bill title, Bill 44-05 Motor Vehicles Parking
Violations we have an additional sponsor, Ms. Praisner is joining Mr. Subin in
sponsorship. That's it. Thank you.

Council President Leventhal,
Thank you very much. I understand there are no petitions today.

Linda Lauer,
That's correct.

Council President Leventhal,
All right. That'll take us to the Consent Calendar...

Linda Lauer,
We do have some minutes, though, for approval.

Council President Leventhal,
Oh, minutes. Yes, of course, please, minutes for approval.

Council Clerk,
You have the minutes of November 22nd and 29th.

Councilmember Praisner,
Second
Council President Leventhal,
Motion is made and seconded. Without objection the minutes will be approved. Going to
the Consent Calendar I would like to suggest that item "O" be removed from the
Consent Calendar for some explanation and discussion. I know Ms. Healy is here.
We've had a number of conversations at the staff level. I am optimistic we won't spend
too much time on it, but I think that we'd benefit from a little bit of explanation of the
Committee's work on that topic. So I'm going to suggest we take Item "O," the Local
Small Business Reserve Program separately. And as Ms. Lauer said we're adding to

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1 the Consent Calendar new item "W" regarding the purchase of Uncle Tom's Cabin. Mr.
2 Andrews.

3
4 Councilmember Andrews,
5 Thank you, Mr. President. On item "P" on the Consent Calendar I wanted to make a
6 couple comments, this for action this morning. The Health and Human Services and
7 Public Safety Committees met and have acted on the recommendations of the Office of
8 Legislative Oversight regarding procedures and laws to address the issue of witnesses
9 of -- child witnesses of domestic violence. This is an issue that Councilmember Subin
10 has brought before the Committees and has focused on very much. The Committees
11 are recommending two courses of action. One is to pursue state legislation that
12 authorizes judges to extend sentences of users found guilty of domestic violence if
13 children are present. And second: to pursue state legislation that requires that the
14 domestic abuser pay for the cost of any state-ordered counseling needed by a child
15 related to domestic violence. And we would like to find a way to also ensure that the
16 County is reimbursed for services provided to children in that situation. Those are the
17 recommendations of the joint Committees. I think that will help move this issue forward
18 and thank the Office of Legislative Oversight and Councilmember Subin for the focus on
19 this issue.

20
21 Council President Leventhal,
22 Thank you, Mr. Knapp.

23
24 Councilmember Knapp,
25 Thank you, Mr. President. Councilmember Floreen and I have introduced a resolution
26 today and we're asking that the rules be suspended in order to actually act on this
27 resolution. Seeking the Council's opposition to the Maryland Transit Administration's
28 proposal to eliminate service to the Brunswick line MARC train stations at Boyds and
29 Dickerson in Montgomery County. And I know that we've also -- we were doing a joint
30 letter between the County Executive and Council as well, assuming that we pass this. I
31 just wanted to take a few minutes to speak on this because I find this to be an
32 amazingly frustrating process that the state is putting us through. Four years ago when I
33 was still running for office state came forward with a draft Environmental Impact
34 Statement on the widening of I-270 and the Corridor Cities Transitway. Typically, as I
35 understand it, and what I have learned since then is the draft Environmental Impact
36 Statement is generally out for comment for 6 to 9 months maybe a year. We're now
37 almost 4 years later. There has been virtually no progress on that draft Environmental
38 Impact Statement. So as Clarksburg continues to grow, as Urbana grows, the notion of
39 traffic on 270, lack of transit options, continues to get worse and worse. When we
40 actually have a transit solution in the ready, as the -- as MARC provides. Rather than
41 actually take relatively nominal dollars and try to see how we can increase ridership on
42 that, the response we get, in addition to the fact that we're not making any progress on
43 other transit solutions, nor widening 270, is to close the few stations that we do have.
44 One would think that the logical thing, given the growth we've seen, would be to actually

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1 provide more frequent stops and some marketing outreach to ensure that we get more
2 people to use the transit solutions that exist. Instead what we get, and actually we
3 received this relatively surreptitiously, I don't even think that we're officially notified by
4 the state that they're looking to close these stations, we have now gotten word that this
5 is the proposal and we now have to voice our opposition against this. So, in addition to
6 actually citing our opposition, I would also ask the Council to work with me and others to
7 make sure that we do work with the state to increase their outreach and efforts to make
8 sure these transit stations see more and more utilization, as opposed to seeking ways
9 to minimize transit alternatives in the up County and the rest of the County in general. I
10 appreciate my colleagues' consideration of the suspension of the rules and thank Ms.
11 Floreen for working with me on this project.

12
13 Council President Leventhal,
14 Thank you, Mr. Knapp, I certainly support your efforts and those of the Chair of the T&E
15 Committee on that issue, and we certainly need to increase use of mass transit not
16 make it more difficult. Ms. Praisner.

17
18 Councilmember Praisner,
19 I have a couple of questions. I want to get them on the record -- so for the public
20 hearing folks from the Executive Branch can answer them. They relate to the
21 supplemental appropriations associated with Homeland Security -- Department funds
22 for Homeland Security. And the questions relate...

23
24 Unidentified Speaker,
25 Can I guess?

26
27 Councilmember Praisner,
28 Can you guess? Question number one: How do these requests fit in with our priority
29 list? Number two: In two occasions, here we're talking about the County serving as a
30 lead agency for the Council of Government initiatives. But they are not, as I can read
31 them, fully funded. And so my question is what is the County obligation and what is the
32 usability of these initiatives should they not receive future funding? And is there an MOU
33 signed among the jurisdictions relative to other counties' support for this initiative should
34 there not be adequate funding to continue or fully implement the program? And can that
35 be done -- is there a usability if it is not funded more than what is funded here. Those
36 are the questions on those Homeland Security items. On "V" I just wanted to comment
37 about the outstanding applicants that we had for the Merit System Protection Board,
38 and note that it was a difficult task in the MFP Committee in making recommendations
39 for the full Council, wants to thank all those candidates that applied for the position.
40 Then I guess on the other issue we will talk about the local Small Business Reserve
41 separately.

42
43 Council President Leventhal,
44 Thank you. Mr. Silverman.

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1
2 Councilmember Silverman,
3 Thank you, Mr. President I would like to be added as a cosponsor to resolution 2A
4 relating to the MARC Trans. I concur wholeheartedly with my colleague, Mr. Knapp. It is
5 yet another in an amazing series of decisions by MTA. And hopefully we can we can get
6 them to see the light. I also wanted to comment on item 2N, which is the Working
7 Families Income Supplement, which is going to provide an additional \$50 to low income
8 families to assist in the increased cost of buying energy. This is not a lot of money. \$50
9 doesn't sound like a lot of money considering what we know is going on with energy
10 costs, but I think it shows a clear indication that we want to try to continue to move in
11 the direction that we started years ago with the creation of earned income tax credit
12 program. It's a opportunity to highlight that we're helping over 22,000 families and the
13 average payment will now be \$525 per family. We started this program years ago. We
14 are the only jurisdiction in the state of Maryland to have it and we need to continue to
15 make sure as we see higher costs for items that are certainly out of our control that we
16 continue to revisit the earned income tax credit program. I hope as we go into a year in
17 which it appears that we will have significant resources that we keep in mind that the
18 best way to help the working poor in Montgomery County is to actually help them and to
19 help put cash in their pockets and I'm very pleased to support this initiative as a first
20 step toward continuing that go effort this year. Thank you.

21
22 Council President Leventhal,
23 Ms. Floreen.

24
25 Councilmember Floreen,
26 Thank you, Mr. President. Two things, with respect to item 2A, I appreciate everyone's
27 cooperation on this one. It's inconceivable to me. It's breathtaking that we have to do
28 this. That we have to suggest to the Maryland Transit Administration that eliminating a
29 transit stop in Montgomery County is possible to even to, put it in a sentence. It's
30 unbelievable that we have to go through the trouble of putting this on our agenda.
31 Putting together a resolution. I think Mr. Knapp are you going to go and express this in
32 actual words and with your usual personality to the state of Maryland that with our
33 transportation challenges that an option that continues to relieve the issues of I-270
34 could be contemplated? It's just very disappointing that we're put to this effort and
35 remarkable that anyone could contemplate this for a second. So I thank everybody for
36 their help on this.

37
38 Councilmember Praisner,
39 Well, we're keeping it a secret how we really feel.

40
41 Councilmember Floreen,
42 I really, really feel that way. Secondly, I do, I want to say very much thank you to my
43 staff and Meryl Steiner, who it turns out has been working on this for a while. This is the
44 resolution to request the Park and Planning Commission to develop a plan for the

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1 purchase The Uncle Tom's Cabin property. And Linda Lauer for cooperating with us.
2 Every so often we read the morning paper and we see that our illustrious own [Mark
3 Fisher], who I believe lives in this part of Montgomery County, emphasizes a critical part
4 of Montgomery County history. And the fact that the home of a slave who rose to
5 tremendous authority on a plantation, is now available for purchase of by the public. I'm
6 not sure though the residents of Tilden Woods, I think it would be, or the North
7 Bethesda community fully appreciate that they live on land that was once a slave
8 plantation. The history that this property encompasses is remarkable and I think it's
9 incumbent upon us to make it very clear to the Park and Planning Commission that we
10 need them to make this a priority in terms of working with funding sources, to acquire
11 this. I have spoken with Mr. Berlage this morning as well as Bill [Grease], who is in
12 charge of property acquisition. They have been working on this when it was first brought
13 it their attention the other day. I think it's helpful for us to be out there to say to them and
14 anybody else that wants to be part of this funding program that this is a very important
15 priority for Montgomery County. An acre of land in North Bethesda with tremendous
16 history stories and reflective of remarkable challenges of slavery, leadership, disputed
17 abuse, treachery, and deceit. What a story and what history we need to preserve and
18 we need to preserve it now. I thank the Council President for his indulgence in allowing
19 us to add this to the agenda at the very last moment this morning. Thank you all for that.
20 Here is the book which we just acquired. Luckily the library just opened.

21
22 Council President Leventhal,
23 Great. Thank you very much. Thanks for your quick action, you and your staff, Ms.
24 Floreen, on the preservation of this historic property. Mr. Knapp.

25
26 Councilmember Knapp,
27 Thank you, Mr. President. Sorry, I forgot, and just want to make a quick comment on
28 two other items, 2Q and 2R. I want to bring attention on these before they just slide by
29 on the Consent Calendar. Both of these relate to budgeting priorities and performance
30 measures and improving decision-making in budgeting. Oftentimes the budget around
31 here is seen as a 3-month exercise. We see it in March, April, May, and then we're off to
32 the rest of the activities that we do. And through the efforts of this Council we've been
33 working try to improve how we better make the decisions and better identify the
34 performance of the programs that we fund so that as our budgets and our population
35 continue to increase we can have a better system of accountability, but be able to
36 explain to our residents where the dollars are going. So we have to two items on the
37 Consent Calendar. One an Office of Legislative Oversight report. Legislative Uses of
38 Performance Measures In Budget Decision-making that was put together by Aron
39 Trombka and Karen [Yoskowitz] and then base budget questions for the FY'07
40 operating budget that Aron had put together. I want to thank the MFP Committee for the
41 consideration of these items and commend them to my colleagues to take a look at, and
42 to others as well, because I think there are a number of issues that were in the OLO
43 Report that were very interesting for us to continue to look at as we gear up for the
44 budget season in the spring. But to also recognize that this is a -- budget decision-

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1 making is a year-round activity. Aron and Karen have put together some very interesting
2 things for us to look at as we go through the year and examine all of our County's
3 programs and activities.

4
5 Council President Leventhal,
6 Thank you very much. All right that will take us, well, let's have a vote on the Consent
7 Calendar. We need a motion for approval.

8
9 Multiple Speakers,
10 [INAUDIBLE]

11
12 Council President Leventhal,
13 Motion is made and seconded. Those in favor of Consent Calendar will signify by
14 raising their hands. The vote is unanimous among those present. We're now going to
15 take up item 2-O, the Executive Regulations on the Local Small Business Reserve
16 Program. I just thought it would be useful. This is such a important program that has
17 received a great deal of attention and interest from this Council. I thought it would be
18 helpful if we could have just a short conversation. I don't think it's going to be
19 controversial, but we'll see.

20
21 Councilmember Praisner,
22 Well, the army arise.

23
24 Council President Leventhal,
25 So, if we could get Chairwoman Praisner to walk us through the recommendations
26 briefly of the MFP Committee.

27
28 Councilmember Praisner,
29 Sure. Be happy to. Right, as the Council will recall the Council passed legislation to
30 create a Local Small Business Reserve Program much earlier this year. And in order to
31 provide the opportunity for some of the issues which were the most controversial or
32 where there was significant debate, namely at what threshold levels and from a
33 standpoint of employment, number of employees and dollar threshold levels, that being
34 the issue where there was a significant discussion and also, for some of the parameters
35 of the program, the legislation basically says that many of those -- that those issues
36 would be resolved through Executive Regulation. So, with that in mind we awaited
37 anxiously to see the Executive Regulation such that we might consider implementation
38 which goes into effect on the program on January 1st, 2006. As will you also recall we
39 asked the Office of Legislative Oversight to begin to monitor the program such that we
40 would be able to evaluate the effectiveness of the program. Unfortunately, the Executive
41 Regulations did not come over until November 29th. And given the Council and the
42 MFP Committee schedules and as you know with Executive Regulations if the
43 Committees have -- and we'll get soon to taxicab fee issues which have similar kinds of
44 requirements for cooperation, and for, interaction between the Executive Branch and

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1 the Legislative Branch. With Executive Regulations if the procedures are -- the rules
2 are, if the Committee has modifications then an amended regulation must come back
3 with that adjustments of the Committee before the Council can act on that regulation.
4 We cannot amend the regulation here. We must ask the Executive Branch to cooperate
5 and adjust that according to the interests of the reviewing Committee and hopefully the
6 full Council. In this case, the Executive Regs and the areas of issue -- the major areas
7 of issue, dealt with the threshold levels of employees, and the annual sales standards in
8 dealing with local small business. And there are -- we had a series of input and
9 testimony from a variety of folks, hearing from our multiple Chambers of Commerce,
10 both the county's and the African-American Chamber and the Hispanic Chamber and
11 others, and individual business owners about what those threshold levels should be. In
12 reviewing the information the department had asked Sage Policy Group to do some
13 analysis of local small businesses within the County. And, they brought some
14 recommendations, basically two sets of proposals for us to look at as well as reviewing -
15 - for the County to look at -- as well as reviewing the structure of the programs in other
16 jurisdictions which appear on, I guess, pages 26 through 29 -- Circles 26 through 29 of
17 your packet. There is also an issue of what is the state standard has been. In reviewing
18 the discussion and the MFP Committee was joined by Mr. Silverman who had been the
19 sponsor of the initial legislation at our meeting. The Committee was I think persuaded to
20 use in most cases, smaller numbers of employees and lower dollar thresholds in order
21 to begin the program. With the understanding that obviously, we'll get some experience
22 with these changes to see if we -- or these numbers, to see -- and can obviously modify
23 them, but were -- given the variety of the opinions that we heard from folks were
24 persuaded to use the Sage numbers in most cases that are on the lower end, with the
25 analysis that I believe that still reaches over 60% of the companies in the County that
26 are in the small business category in each of those categories I believe the threshold
27 numbers were over 60%. So the other issue was one of when it should be numbers --
28 you had to meet as far as criteria -- that you had to meet the number of employees
29 "and" the annual salary standard. And the Committee was persuaded to keep that as an
30 "or" criteria. So you either meet the or standards of numbers of employees at the
31 maximum number of employees, or you meet the annual sales standard dollar threshold
32 in order to qualify. This is self-certification process, as you will recall. It also can extend
33 to companies that have not been in existence for more than a year. So it is a -- can
34 really help start-up businesses as well. We eliminated in our discussion of the
35 regulations the use of payroll data as a local presence test. And we also made clear,
36 within the regulation as amended by the Executive Branch that the contracts are
37 excluded from the program if it is an annual renewal already included in the preexisting
38 County contracts, and those are exempt from the program. We also added reporting
39 language requirements so that the Office of Legislative Oversight has the data that it will
40 need to conduct a review of the effectiveness of the program. I guess what I would say
41 based on the conversations of the Committee, there are those that argued to us that we
42 should use the higher numbers. But the Committee was persuaded I think by -- and Mr.
43 Silverman it was a unanimous -- I think Mr. Silverman agreed with each of the
44 Committee recommendations as well. It was an issue of starting the program and

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1 having more experience in order to make sure that we are working and have a program
2 in place. The size and gross revenue standards may need to be modified in the future.
3 But with these numbers we believe we are responding to some of the testimony that we
4 heard. We're also responding to the small business argument and issues, and part of
5 the issue or the concern that the Committee had with the higher numbers, is that if it
6 captures more of the businesses in the County, and if 90 some percent of the
7 businesses in the County are eligible to bid on projects then you're still going to have I
8 think the challenge for the small business that the larger firms are more likely to trump
9 the smaller business participation, and receiving the award, and because they would be
10 considered a small business within that criteria. So we use the more restricted standard
11 as a base line. We did revise some of the sales standards to reflect you will see in
12 manufacturing and construction a higher annual sales standard. I think also, we had
13 some conversation about some of the comments that came from departments as they
14 were commenting to the regulation. Some of the comments from the departments
15 actually speak to concerns associated with the legislation that was adopted. And, again,
16 I think, while the Council wanted to implement this program, we'll have to keep an eye
17 and monitor some of the concerns that the departments raised such as their ability to
18 track some of these issues, clarification about how it applies and also some concern
19 about the ability of the company that may be awarded the contract, to be able to fulfill
20 the contract. I think there was some concerns about the capacity with some of the
21 smaller businesses. So that's the unanimous Committee recommendation, Mr.
22 President.

23
24 Council President Leventhal,
25 Thank you, Madam Chair. Let me just comment briefly -- first of all I want to
26 acknowledge that Warren Fleming is here with us. Mr. Fleming has been, I know for
27 many Councilmembers, and certainly for me, a source of very good advice and support
28 for this legislation. Warren is one who brought to me, to my attention the need for this
29 legislation well over a year ago. He's monitored it every step of the way. I appreciate
30 your diligence, Warren, in keeping us informed about the need for this. Many of us will
31 be attending the Minority Legislative Breakfast Friday morning, at which there will be
32 great interest in this legislation, and at which I anticipate there will be happy people and
33 disappointed people. And realistically on this issue of the threshold there are going to be
34 some happy people and some disappointed people. I'm going to vote in favor of the
35 Committee's recommendation today, appreciating the Chair's comment that we can
36 come back later on this year, I would hope that we might really look at about a 6 month
37 period, you know, shortly after July 1, and really evaluate with the Department how has
38 the participation been, how has our ability been to find participants, are people being
39 excluded, and are we finding it easy or difficult to meet the 10% threshold? Let me
40 thank the department. No one likes to have a brand-new imposition placed on their time.
41 This is a complex policy matter that we the County Council have put on the department
42 and required them to get their minds around and to implement and with some political
43 sensitivity. We, you know the interest -- the large number of cosponsors and the
44 unanimous vote of support for this legislation, there is a lot of interest here on the

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1 County Council in the implementation of this. Not only have we given you something
2 brand-new to do. We're intensely interested in how you do it. So I acknowledge -- I
3 acknowledge that it's not an easy task that we have dumped on you and we appreciate
4 your efforts to implement it. I would like to ask a question. I see a number of lights are
5 on. With the modification that the MFP Committee is suggesting with respect to the
6 number of employees or the volume of business will we be able to have these regs in
7 place and will we have the 10% requirement in place by January 1?
8

9 Joe Beach,
10 I think the answer's yes.
11

12 Peter Bang,
13 Again, we have informed the MFP Committee saying that the stress on the program will
14 rely on how quickly can we add the vendors to the certified list. Although they are self-
15 certified we do have to broadcast market campaign to inform all of the small business
16 concerns of the County so that they would be interested in participating in this program.
17 Once the critical mass of vendors are into the database system then we can
18 concurrently launch a marketing campaign to using department to actively solicit.
19 Because for now, without any vendors in the database system, for us to work with the
20 user department, it's a daunting task. But once the using department's procurement
21 agents see that there are a number of qualified business in each commodity code they
22 would be more inclined to work with those vendors. I believe that within the first four or
23 five months we will be focusing on adding the vendors into the database system. In
24 terms of 10%. Recognizing the County's procurement practice, where at the onset of
25 fiscal year most using departments already allocate most of the contracts. So at this
26 point when we look at the balance, six months of FY'06, we don't believe that the using
27 departments are holding onto at least half of their contract dollars. I think close to 80 or
28 90% of the contract dollars are already out in the marketplace. So that means they are
29 only continuing with 10% of original contract dollar value. It will be almost impossible for
30 us to enforce the 10% this year. But based on our effort to really add the vendors I
31 believe the 10% should be met rather easily at the onset of FY'07. We're actually
32 looking forward to FY'07 numbers as opposed to FY'06.
33

34 David Edgerley,
35 Just to add a thought to what Peter mentioned. We have built in a dynamic in the
36 system, or an opportunity in the system, if a department chose to put contracts into the
37 reserve bidding process, companies that want to respond to that can self-certify as a
38 part of the bidding process. There's a technology connection between the certification
39 process and the actual bid. The day of the submission, if it's a simple bid or simple
40 quote, they could certify at the same time for that to be simultaneous with the billing. So
41 the database, while it would be great if it were populated with a wide variety of
42 businesses that were self-certified, and they could add to -- we could have new certified
43 businesses coming in with the bids concurrently.
44

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1 Councilmember Praisner,

2 If I could comment, I hope that folks that are in the small businesses will understand the
3 cycle of County budgeting. The reason why January was plugged. Even though we
4 adopted the program in June, was because you need time to write the regs but you
5 need time to set up the program. Because a big piece of this is those contracts that are
6 the smaller dollar amounts that weren't out there from a public piece as well. So that,
7 there is the exposure to contracts that folks might have seen in the informal contracting
8 is now available for folks to see. That's a big piece. That takes a lot. No -- as we were
9 told within the Committee -- no county that we know of goes below \$25,000 as far as
10 what are bids that are on any kind of internet or public access threshold. So there is a
11 lower dollar amount by the County. Therefore there was a lot of work that needed to be
12 done to get all of these things ready. But given that we run from July 1 to June 30
13 calendar, the likelihood of a lot of contracts being available right away is not likely, as
14 you said, if you're contracting for some service you might have expended a significant
15 portion of your budget before now. But, the opportunity to participate with the amounts
16 that are still left, plus to be ready for the next fiscal year is when I think we'll see a lot of
17 even more activity. It will help us to get feedback from folks as to how these regs are
18 being implemented as well.

Deleted: likely

19
20 Council President Leventhal,

21 Great. Very briefly. There are other lights on. Let me go ahead and recognize Janice
22 Freeman who is here, who is President of the African American Chamber of Commerce
23 and who also has been a very strong advocate for this legislation. I know that many in
24 the business community that advocated a higher dollar volume threshold did so
25 believing that they're -- the businesses that they were looking out for are small
26 businesses. They're really, there is no purpose in debating whether a business is or is
27 not small. I think those voices in the business community that have been contacting us
28 asking for a higher threshold, probably did not fully grasp that some of the very high
29 dollar -- not "very high" but dollar thresholds of \$10 million in business or so that had
30 been suggested, that wide of a net would essentially capture every business doing
31 business in Montgomery County with very few exceptions. So the question before us
32 this morning is whether we want a local Small Business Reserve or whether we just
33 want a local business reserve since the overwhelming majority as shown in the study
34 that the Department commissioned of businesses are -- would be captured once you
35 get above a threshold of about \$7 million. So in the interest of maintaining a local small
36 business reserve and as Chairwoman Praisner has said believing that if you had a
37 threshold that captured every business the larger business would be more competitive
38 than the smaller business, and understanding that we can modify the thresholds later, I
39 think the Committee has done a good job, although, again I acknowledge it's going to be
40 a controversial recommendation. Mr. Silverman.

41
42 Councilmember Silverman,

43 Thank you, Mr. President. This is absolutely an art not a science. And the only way
44 we're going to see when the program works as we envision is to put numbers out there

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1 and find out what happens. I'm going to support this, not because I think as precise as
2 it needs to be, but because I think we're in a guessing game, not about the size of the
3 small businesses that are in Montgomery County, but in reality the question of when we
4 know how many retail businesses there are that actually have an interest in bidding on
5 Montgomery County work. I appreciate the work that the Sage group has done in trying
6 to quantify the number of businesses in each category, but the real question is how
7 many of them are actually interested in looking for work, contracting with Montgomery
8 County which is obviously going to be a much smaller subset. So the only way we're
9 really going to know I think is when the program gets up and running. I would hope we
10 would be able to have some data within 6 months. Even though it would not be
11 comprehensive by any stretch of the imagination, but at least it'll be representative
12 enough initially. I think that -- I can't speak for what is going on at the state level and
13 why they have run into the challenges they have run into, that's their challenge. but I
14 know we've got a Department of Economic Development and a Procurement
15 Department that is very interested in seeing this succeed for all the reasons why, we
16 wanted to get something past in the first place. What I would say is this. If we set the
17 numbers too high, and then find out that, in fact, really there are some very large small
18 businesses that are ending up with a lot of the contracts, we will never as a practical
19 matter be able to scale back the program. You can't tell somebody that got a
20 Montgomery County contract under a small business program, well actually they're too
21 big and they're out. If it turns out that we get a limited number of folks who apply that are
22 eligible, and in fact the Council and the Departments believe that it is important, you
23 know to expand the pool, that actually will be easy to do. And at least speaking for
24 myself I don't want to wait a year to see what kind of information that we have. But it's
25 going to be a lot easier to expand the pie so to speak than it will be to tell folks that they
26 can't get a slice of it. And that's why I'm prepared to support this and will end up seeing
27 whether these numbers play out. I think there's as I said, much more of a lot of
28 speculation about whether these are the right numbers or not. The real test is going to
29 be -- hopefully you're going to have a bunch of new small business that are going to be
30 applying knowing they have a actually shot of getting a contract with Montgomery
31 County and we can make adjustments as we go along. Thank you.

32
33 Council President Leventhal,
34 Mr. Perez followed by Mr. Knapp.

35
36 Councilmember Perez,
37 I just wanted to learn a little more about how the waiver will work on Circle 11. There is
38 a note that chief administrative officer will have the authority to waive the application of
39 the reg. And I would like to keep a close eye on this because I have heard some
40 feedback from time to time that the waiver, the exception, can become the rule. And so I
41 just want to float that now and get a sense of how that will work and make sure we have
42 data on how frequently that is exercised.

43
44 Councilmember Praisner,

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1 Well we're supposed to get a report on that as part of the annual report. Since we're
2 talking about wanting to get a temperature of how things have occurred in about six
3 months. Since you're gathering the information every time it occurs I would assume
4 because you don't wait until the end of the year to pull all of that information together.
5 He we should be able to have that information I would suspect as to how many waivers
6 were granted and whatever other data you have on those waivers that the dollar
7 threshold or the number of folks or the reason why. We should be able to get that
8 information at the 6 month period when MFP will review this again.

9
10 Councilmember Perez,
11 Great. Okay. Thank you.

12
13 Council President Leventhal,
14 Mr. Knapp.

15
16 Councilmember Knapp,
17 Thank you, Mr. President. I would like to concur with the comments Mr. Silverman and
18 Ms. Praisner raised. One of the concerns I had as we debated this the first time around
19 was that we're making a lot of decisions on a lack of information. I think it's a very
20 noteworthy and meritorious program that we're going to implement, but we don't know
21 how businesses will respond and when they will respond and why they haven't
22 responded in the past. Virtually any decision we're making we're making with a lack of
23 information. I think we all assume this will be a good thing. I concur that we should as
24 soon as practicable come back and have some understanding as to how businesses
25 are participating, what size businesses are participating, and who is not participating. To
26 a great extent why. In looking at the numbers I didn't recognize when at first kind of
27 heard people discussing this that the percentage of eligible businesses in the County
28 that we're including with the numbers that the Committee has recommended. So I think
29 it's as good of a place to starts as any. I think we don't know what the right answer is
30 and we will see that in time. I think that even looking at the study that was
31 commissioned, which I think was a good study, it points to a number of jurisdictions with
32 a wide ranging set of data points and association apparently there is no right answer out
33 there. We're going to have to figure out what works for Montgomery County. Would urge
34 if you administer the program, to do it hastily and get us as much information as soon as
35 we can get it so we can make sure we're doing the right thing by the businesses in our
36 community. And the only thing I would add to Mr. Leventhal's original statement is I
37 would like to sit down with the department to evaluate how it's working and make sure
38 question get good feedback from the business community.

39
40 Council President Leventhal,
41 Okay, with that I see no more -- Ms. Praisner, you still have your light on.

42
43 Councilmember Praisner,
44 No, I was just...

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1
2 Council President Leventhal,
3 I see no more comments and the Committee recommendation is before the Council.
4 Those in favor will signify by raising their hands. Okay, it passes unanimously.

5
6 Councilmember Praisner,
7 Thank you.

8
9 Council President Leventhal,
10 Our next item is action on a resolution regarding Spending Affordability Guidelines for
11 the FY'07 operating budget.

12
13 Councilmember Praisner,
14 Yes, the Management and Fiscal Policy Committee met twice for guidelines for the
15 FY'07 operating budget. We also had a public hearing as you will recall on the
16 Committee's recommendations. There are some modifications to what you have seen in
17 the past as it relates to the way we have approached this issue. Let me go through the
18 regular discussion items and come back to the issue and modification that the
19 Committee is recommending. The Committee is unanimously recommending that the
20 property tax rate for the consideration of this be set at the charter limit. This is as I
21 gather consistent with the County Executive's proposal as well. The Committee as far
22 as the other revenue income tax transfer recordation, general state aid, and other taxes
23 is assuming the current rates. Would make one comment, in our conversations with
24 Finance Department, what we have seen is you know about the assessment increases
25 and its impact on income tax, we also have seen some adjustments in income tax. The
26 area where we have seen the most dramatic increases in revenue, beyond what might
27 have been our standard collection of revenue, is in the transfer and recordation tax
28 which is the most volatile source of revenue for us and reflects a considerable amount
29 of the activity in the County both for sales and purchases of homes but also refinancing
30 activity. And as you can see in the FY'06 budget in Circle 1 on column 1, the FY'06
31 budget approved for FY'06 assumed a transfer and recordation tax revenue of \$184
32 million, the revised revenue adjustments for this year, as of November 22nd, is \$249
33 million,. So you can see the dramatic increases in that area which are reflected in the
34 Department's revisions and I would expect, is that when the County Executive's budget
35 comes out in March we may see additional modifications in that area but we don't know.
36 The one point I would make to my colleagues is that as we saw a lot of very positive
37 economic issues in front of the County from a standpoint of projections and revenue,
38 there are also warning lights that I think the County needs to be observant of. The first
39 one being this transfer and recordation tax and activity. To the extent we're continuing to
40 see this as an attractive place to live and to the extent that the housing market
41 continues, we will see a positive climate. But there has been a slow down in
42 construction, and to the extent that folks were looking at issues such as the value and
43 when housing prices and housing values may be over the level that would be a
44 reasonable assumption for housing prices in the area. I think overpriced or whatever

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1 term you want to use. That can affect both transfer recordation tax and also can effect
2 folks from an income perspective because as housing -- as folks use interest only loans
3 -- which has become a popular way of financing homes, unless there is a significant
4 appreciation there is no equity. There is no equity unless you turn it over into a new
5 home. The question of income and capital gains and value becomes an issue. The
6 second thing I would comment on is state aid and federal aid. I don't think I need to tell
7 this Council about the activity that is going on in Washington as it relates to aid to local
8 governments in categories that we continue to monitor. And, whether it's in the Health
9 and Human Service area, or in the Housing area, or in Education area at the federal
10 level, there are a variety of places where federal aid is and could become problematic.
11 In the area of state aid our assumptions continue to assume the revenue that the
12 County is due, so to speak, from the state, that includes the Geographic Cost of
13 Education Index for the Thornton money, therefore this year it will be around \$17 million
14 that the County is assuming would be revenue from the state in that assumption. And it
15 will require all of us to do a full court press to make sure the state fulfills it's obligations.
16 In our discussions this year, we talked about the issue of one-time revenue. And trying
17 in previous conversations with the Finance Department to get a handle on how much
18 revenue coming into the County can we assume on a ongoing basis is sustainable for
19 our budget perspectives and how much revenue maybe spikes in projections associated
20 with things like transfer and recordation tax and in some cases in the past we've had
21 significant income tax revenue coming from capital gains which is not salaried income
22 that can be assumed on a ongoing basis. What the Committee decided to do, and I
23 think Mr. Denis was amenable to the issue but not necessarily to how it was allocated.
24 We looked at the books that were closed in October of this year for the FY'05 budget.
25 Not this year that we're in, but last year. And found that we had made assumptions
26 about how much money would be there when we closed our books to carry over to the
27 FY'06 budget area for use in '06 and identified that when we estimated the '05 reserve,
28 we estimated \$245 million. Now that the books have been closed the actual reserve at
29 the end of FY'05 was \$316.5 million which is an increase of \$71.5 million from the
30 estimate that we had last May. The Committee chose to use this or identify the \$71.5
31 million as one would call a one-time revenue. And, it's concerned about the use of one-
32 time revenues for ongoing operating budget expenses. And consistent with what the
33 Council has done in the past at least in the early '90s, attempted to use one-time
34 revenue for one-time expenses. Thereby not continuing that cost when the revenues
35 may not be there. What the majority of the Committee is recommending is that we take
36 some portion of the \$71.5 million in one-time revenue, and use it for one-time expenses.
37 Hopefully within FY'06 in a supplemental appropriation. What I proposed and Mr.
38 Andrews agreed was that we would use 1/3 of that money or \$23.8 million for one-time
39 expenses and targeted our initiatives on maintenance and improvements in information
40 technology when that be hardware or software. That would be, therefore, it is shown in
41 a category separately. Mr. Denis wanted to -- was concerned about CIP cost increases
42 and therefore didn't support using it in FY'06. In addition we had comments from OMB
43 that it might be hard to spend that money in this fiscal year and I must say since we're
44 December, we have 6 months left to this year, I found it hard to believe that we could

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1 not identify either technology or maintenance issues that could be highlighted and either
2 appropriated or approved for appropriations. But if that became a problem there is
3 always the opportunity to use a capital budget for eligible capital budget project use.
4 And that we think especially since we have already identified code red technology
5 projects, that are above and beyond the cost that we're talking about as far as revenue,
6 we should be able to find those. In addition before the last meeting we got a memo from
7 Ms. Floreen who suggested that when we did the capital budget last year, we increased
8 the debt of the capital budget beyond what we wanted to, in our spending affordability
9 goals, by \$4 million. And since we have this capacity at this point, she had
10 recommended that we use that \$4 million in PAYGOPAYGO in this -- use \$4 million in
11 PAYGOPAYGO in this fiscal year, in order to ensure that we stay at the CIP spending
12 affordability level, not incur more bonds and debt which therefore would turn into more
13 costs in ongoing years in debt service. So the Committee agreed with Ms. Floreen, last
14 time what we would do is amend a resolution. The resolution for the CIP. And I asked
15 staff to include it. It's associated, it's on Circle 9 and that would amend the resolution of
16 the general fund resolution by using \$4 million more in current revenue instead of -- or
17 PAYGOPAYGO, instead of bond funding. And those would be for bond eligible projects.
18 The Committee recommended that be in addition to the \$23.8 million for one-time only
19 technology. The final issue is a distribution across agencies. And resources for FY07
20 will increase around 9% more than the FY'06 budget. Rather than allocating all of those
21 resources to specific agencies at this time, the Committee recommended -- and this
22 was unanimous -- recommended approving a 6% increase for each agency. And putting
23 \$68.8 million in an unallocated resource category which can be appropriated to any of
24 the agencies, any use that the Council may choose or reduction in taxes beyond what is
25 at its current level that. But that would give the Council much more flexibility than
26 assuming it would automatically go to the agencies. That is the Committee's
27 recommendation.

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28
29 Council President Leventhal,
30 Okay. Thank you Madam Chair. I see a number of lights on. Let me suggest, my sense
31 is that the issue of the use of one-time revenues is going to take some time, let me just
32 see if Councilmembers want to speak generally to the recommendations of the
33 Committee before we get into the discussion on the use of one-time revenues? Okay? I
34 guess everyone wants to talk about the use of one-time revenues. Mr. Knapp did you
35 want to make general comments about the Spending Affordability Guidelines first?

36
37 Councilmember Knapp,
38 [INAUDIBLE]

39
40 Council President Leventhal,
41 Okay. Mr. Silverman.

42
43 Councilmember Silverman,

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1 Thank you, Mr. President. Well, back to the future. This is like 1999 and 2000 all over
2 again. Which is actually a good thing. Right Tim? [laughter] I agree with the focus of the
3 Committee. I'm just not sure I agree with the specific recommendation with regard to
4 FY'06. It appears that we're going to have a significant amount of resources and that's a
5 good thing and is appropriate for us to look at using some of those resources for one-
6 time expenditures and so I agree with the Committee in that sense. What I guess I may
7 part company on is the suggestion that the monies be allocated for FY'06 supplemental
8 appropriations for maintenance and improvements in information technology hardware
9 or software. I agree that we have tremendous challenges in the I.T. arena and I don't
10 want to suggest that I'm not interested in being supportive of that. But we are on the
11 brink of getting a capital budget from the County Executive on January 15th, where we
12 already know, based on school construction numbers that we are expecting to see very
13 high increases in our need for school construction dollars starting in FY'07. We also
14 know that we have gotten increases in construction costs relating to recreation centers
15 and I'm sure it's going to be across the board with other capital projects. And so my
16 hesitancy in supporting the position of the Committee is not that I don't want to see
17 \$23.8 million set aside but I would prefer that it be put into the unallocated resource
18 section with a footnote indicating that we expect that the Council will use those dollars
19 for FY'07 one-time CIP or one-time operating budget expenses. But the idea that would
20 we leap frog I.T. in FY'06 ahead of everything else in the capital budget is not
21 something that I can support given what I know are going to be enormous needs that
22 we're going to have in specifically school construction, but other arenas. Having said
23 that there is nothing that prevents us at any time from approving a supplemental
24 appropriation for information technology using the reserves we have in place before,
25 during, or after our deliberative process. So if there is a need to do something right
26 away whether it's code red or some other characterization it seems like we should move
27 forward with that. So what I would move is I guess, Mr. Denis's position which is to take
28 the \$23.8 million and put it in unallocated resources but I would say it should be
29 accompanied with a note indicating that we expect it to be used for one-time FY'07 CIP
30 or operating budget expenses.

31
32 Councilmember Denis,
33 I'll second the motion.

34
35 Council President Leventhal,
36 The motion is made and seconded. Before I call on Mr. Subin, I just...

37
38 Councilmember Praisner,
39 Can I ask a question first.

40
41 Council President Leventhal,
42 Go ahead.

43
44 Councilmember Praisner,

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1 That doesn't deal with the \$4 million...
2
3 Councilmember Silverman,
4 Oh, I know. That's...
5
6 Council President Leventhal,
7 The \$4 million is the Committee's recommendation.
8
9 Councilmember Praisner,
10 No, there are two. One is \$4 million and one is the \$23.8. Okay fine. All right.
11
12 Council President Leventhal,
13 Okay before I call on Mr. Subin I would like to say I know I speak on the entire County in
14 complimenting him on his bow tie.
15
16 Councilmember Silverman,
17 Did you say "Botox"?
18
19 Councilmember Subin,
20 Thank you, Mr. President.
21
22 Multiple Speakers,
23 [laughter]
24
25 Councilmember Subin,
26 I'm going back to court. Thank you, Mr. President. Thank you, Mr. President. I'm going
27 to vote against the motion, but also have at the end if I speak in favor of it another
28 suggestion. It is clear that over time I.T. and maintenance have been the step children
29 of the budget. They're the last pieces to go in and our deferred maintenance backlog
30 gets worse and worse every year. It's typical of not just here but everywhere,
31 maintenance just is not a very popular issue to address. We have been falling behind in
32 I.T. We haven't opinion able to keep up. There are areas, Public Safety and other,
33 where a lot of work needs to be done. And there have been a number of suggestions
34 comes out of MFP on how to deal with that. So I think MFP's approach, the majority of
35 the MFP's Committee's approach is absolutely the right one and how to deal with this.
36 The only issue -- and I'm not going to say that I differ on this -- but, may have if I were
37 on the Committee worked this a little bit differently, it's Ms. Floreen's suggestion of the
38 \$4 million. It is clearly the right thing to do. I'm just not sure that it's enough. The
39 \$400,000 that it saves for next year is certainly appreciable and I know we all could
40 spend that in a heartbeat on one or two favored projects, but we've discussed for a long
41 time looking at some of the targets that are the surrogates for whether our bonding is
42 too high. One I have personally looked at is the issue of the debt services as a
43 proportion of the budget. We have always targeted 10% but, have climbed higher and
44 high, over time. I think this is a opportunity to lower that number. What I would suggest

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1 but not fall on my sword over, is taking Ms. Floreen's \$4 million up to \$10 million, which
2 would save us \$1 million next year on debt service, I'm not sure how that works out over
3 the 20 years, I know it would be a savings of \$8 million at the \$4 million stage. So
4 somebody -- Tim or somebody or Glenn or whoever can do the math. But it clearly
5 would be a substantial number. And I'll put the \$10 million out there as a -- well I'll make
6 it a motion so if there's a second we can discuss it.

7
8 Council President Leventhal,
9 Mr. Subin, we will definitely take up your motion. What we need to do first is deal with
10 Mr. Silverman's motion and then we'll take up your motion. We have a motion on the
11 table now but we will absolutely get to your motion.

12
13 Councilmember Subin,
14 I understand. That's fine. Okay. That works.

15
16 Council President Leventhal,
17 Very good. Mr. Knapp.

18
19 Councilmember Knapp,
20 Thank you, Mr. President. I appreciate Mr. Subin's motion because I was going to make
21 a similar one. The question I would ask is in the Committee's recommendation was it
22 was \$4 million in addition to the \$23. Is Mr. Subin suggesting that it's an additional \$6 or
23 additional \$10 above the \$23 so that would make a total of \$33 that we would have set
24 aside?

25
26 Councilmember Praisner,
27 Um-hmm.

28
29 Councilmember Knapp,
30 Okay, and the other clarifying question I have is back to the Committee. I just want to
31 make sure I understand this. You're suggesting that it's, I.T. expenditure or I.T. and
32 maintenance?

33
34 Councilmember Praisner,
35 I.T. and maintenance.

36
37 Councilmember Knapp,
38 Okay, because I think given the report that you came out with last year and what we've
39 been trying to do in... there is a number of things in the maintenance category that need
40 to be addressed, and so as long as we have that flexibility.

41
42 Councilmember Praisner,
43 No, it's maintenance and I.T.

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1 Councilmember Praisner,
2 I'm just concerned that there are systems where we have to -- we can't buy the whole
3 new system, but we need to make some down payments on them or one of these days
4 our employees won't get their paychecks.

5
6 Councilmember Knapp,
7 No, I agree and we've had -- I've sat in a number of meetings where we've talked about
8 the I.T. piece and I think that's clearly something that we've missed a lot. And it's only a
9 matter of time given the bailing twine and chewing gum and everything else that's
10 holding that system together right now. I just want to commend the Committee because
11 I think they've come forward with some very good recommendations. I thank Ms.
12 Floreen for her proposal for the \$4 million. I want to add that I think that the resource
13 agency allocation piece was very well done, because I think that just in feedback I've
14 heard from different agencies and departments that everyone has looked at that 8.6%
15 or 9% and has started to figure out how they can spend up to it and so I think that's
16 important to keep this down at that level. The other question I would have, this is just a
17 basic, I should probably know this. If we have now taken \$33 of the roughly, was it \$91
18 million that we have in additional revenue. That, just becomes unallocated, part of the
19 general reserve fund? Effectively. We have \$60 million or \$58 million?

20
21 Councilmember Praisner,
22 We could earmark it for what you're talking about. Chuck would create a category for
23 that.

24
25 Councilmember Knapp,
26 For the remaining \$58 million in revenue.

27
28 Councilmember Praisner,
29 That would be unallocated, there is a line for that.

30
31 Council President Leventhal,
32 It's in the undedicated reserve.

33
34 Councilmember Praisner,
35 Undedicated, right, right.

36
37 Councilmember Knapp,
38 So with that \$58 what does that actually put our percent, of where we try to put 6% in
39 the reserve allocation?

40
41 Councilmember Praisner,
42 It's still 6%. We would end the year -- our goal is to end the year with 6%.

43
44 Councilmember Knapp,

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1 Okay. No, I appreciate Mr. Subin's motion, I think that's a good idea. I commend the
2 Committee for their efforts.

3
4 Council President Leventhal,
5 I have a question for the Chair. If Mr. Silverman's motion fails and the Committee's
6 recommendation prevails how exactly will that occur? Will OMB come back to us with
7 supplementals that follow the Committee's direction? Will we then get a plan as much is
8 maintenance, how much is I.T., et cetera?

9
10 Councilmember Praisner,
11 Right, we can do that ourselves or OMB can come over with proposals. And I have
12 already had a couple of agencies who have contacted me and said they're going to give
13 us a wish list.

14
15 Council President Leventhal,
16 Was it the Chair's intent that MFP would then come up with the \$23 million
17 supplemental?

18
19 Councilmember Praisner,
20 We'll look collectively at that and work with OMB on that issue.

21
22 Council President Leventhal,
23 I don't see any other lights on this. I'm going to vote with Mr. Silverman, although I won't
24 be disappointed if his motion goes down. I agree with...

25
26 Councilmember Silverman,
27 Way to go George.

28
29 Multiple Speakers,
30 [laughter]

31
32 Council President Leventhal,
33 I agree with the MFP Committee majority that that it does make some sense to invest in
34 one-time improvements, and I would be interested to see what plan emerged with
35 respect to maintenance versus I.T. investments. This is no question that at the HHS
36 Committee we hear all the time about our inability to accomplish certain things, our
37 inability to get checks out the door, our inability to pay our contractors because of I.T.
38 problems. We have heard abundant discussion at Park and Planning if we had better
39 I.T. maybe we could address some of the problems being raised. Having said that --
40 and therefore, we'll see what happens with Mr. Silverman's motion. I would be happy to
41 work with the Vice President and the Chair of the MFP Committee on a technology
42 initiative in the FY'07 budget. That would actually be my preference as how to allocate
43 this found money. My concern is that we're basing the finding of this money on certain
44 assumptions particularly we've got an assumption on GCEI, which we hope will bear

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1 out, but where will we be if in fact the legislative session doesn't go the way we want
2 and the Governor's budget doesn't go the way we hope and expect, and we find we
3 have an unexpected shortfall in the school system... And, you know, there's just a
4 number of things that could happen between now and the middle of March that make
5 me a little concerned about setting aside this \$23 million now. But, so I'm going to vote
6 with Mr. Silverman Having said that absolutely would like too to see a technology
7 initiative and a maintenance initiative in the FY'07 budget. And look forward to working
8 with the Vice President and Chair of the MFP Committee on that. The motion before the
9 Council right now is the motion made by Mr. Silverman that would not concur with the
10 setting aside of \$23 million for maintenance and information technology. Those in favor
11 will signify by raising their hand. That would be Mr. Denis, Mr. Silverman, and myself.
12 Those opposed will signify by raising their hands. The motion fails 6-3. We now have
13 the motion by Mr. Subin regarding additional funds for PAYGOPAYGO. An additional \$6
14 million. That would mean a total investment of \$10 million in PAYGOPAYGO. Mr.
15 Silverman.

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16
17 Councilmember Silverman,

18 I'm going to oppose this, and the reason I'm going to oppose it is because I think
19 factually what has been stated is inaccurate. If we want to have a redebate of the issue
20 of our bond funding, then let's have it with facts as in, I don't believe we're even close to
21 10% in terms of our numbers because the interest rates are so low. We had this
22 discussion when we bumped the bond numbers up to \$240 million. All we're going to be
23 doing in this process is take an additional \$6 million out of bond funds that we already
24 have available and using cash for it. Which may be the right decision, but is the wrong
25 decision to make without having a capital budget in front of us, without having a
26 operating budget in front of us. It is not the fiscally responsible thing to do. It is a fiscal
27 position which is devoid of any factual information that would allow us to understand
28 whether in fact we want to continue to use bond capacity. That's a decision we made.
29 Why \$6 million, why not \$10 million, why not \$15 million We got \$60 million. We can just
30 do whatever we want to do. We ought to have that policy discussion, but you know it
31 would be helpful I think if we had that policy discussion when we saw what our capital
32 budget needs are. We have a school system that has said that we're going to have a
33 20% increase in school construction costs. Maybe we want to use some of the cash that
34 we'll have to pay for that. Maybe we want to use bond capacity. But we ought to have
35 that discussion when we have the information in front of us based on the County
36 Executive's January 15th budget which is only a month away. Because there is no
37 factual basis other than picking a number to go ahead and do this. I wasn't going to fight
38 over \$4 million although that is picking a number as well. It might as well be any
39 number. Was the number we used last spring. That's all its rooted in. Dr. Orlin would
40 love us using lots of cash instead of bonds. But I appreciate the fact that, incredibly
41 enough, Glenn does not actually vote on this. I'm going to oppose Mr. Subin's proposal
42 because I think it's fiscally premature.

43
44 Council President Leventhal,

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1 Mr. Subin.

2
3 Councilmember Subin,

4 Well I want to thank the Councilmember from New Hampshire for calling me fiscally
5 irresponsible, because I know there are some out there running around calling me
6 fiscally too conservative. It makes me schizophrenic but I've been called other things so
7 that's okay. I've been up here. This process, has been in existence for roughly 18 years.
8 And I've said everything that Mr. Silverman has said, not regarding this motion but
9 regarding this process. That it is a bad process. That from a policy perspective, it is the
10 cart before the horse, that we're making decisions without seeing budgets, without
11 knowing what is there, without knowing what the impact is going to be. You know, I've, I
12 think, once again, just as with my comments about fix the problem not the blame. Mr.
13 Silverman is one more time reading from my script. That said -- that said, this process is
14 the law. It is what the citizens told us we need to do, is what the Council told us that we
15 need to do, and we are going to do it, we are going to participate. And what that does
16 mean is that every single debate, every single number that is in this packet is probably
17 premature. And you can't get away from that fact. Why are we dealing with \$90 million
18 extra today? Because this debate was held a year ago, the numbers were decided on a
19 year ago, 6 months before the budget was passed, 6 months before we knew what the
20 future would look like we any firmer guarantees. And so you make some of those
21 decisions now based on policy. I will not be out school budgeted. I won't. If anybody
22 thinks I'm going to sit here and on one hand, be told that I give them everything I want
23 and now I'm ripping them off. No I don't think so. That just is not going to work. And the
24 reality of the budget is we're not taking anything away from anyone. We're trying to
25 make a policy decision here based on Ms. Floreen's numbers that says we're going to
26 pay less in debt service than we would otherwise have to if this money were not
27 available. That means there is \$1 million more available for the operating budget. If you
28 want to spend it. Or there is \$1 million more for tax relief if you want to give it. And those
29 options and those debates an those choices will be held in the spring. These numbers
30 don't preclude that. And this body will have the opportunity to discuss all of those
31 options about what to do with this million dollars then. You can take it and PAYGO and
32 put it in the school construction. You can take it and PAYGO and put it in college
33 construction. You can take it and PAYGO and put it into recreation centers. Put it
34 wherever you want. If you want to put it into something. If you want to use it for tax relief
35 that million dollars will now be available also. And, it will also increase the bonding
36 availability by \$1 million. So, you know, I resent the issue of using the word
37 "irresponsible." Because what this does, what Ms. Floreen's proposal does, and this
38 increases it, is gives us more choices and more options in the spring. That is when
39 these debates are really held is when they should be held, and but for this process we
40 wouldn't even be arguing that out today. I'm not going to be out schooled. I'm not going
41 to be out educated.

42
43 Council President Leventhal,
44 Ms. Floreen.

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Councilmember Floreen,

Thank you. Well I appreciate this conversation, I do think though that what we are simply doing here is adjusting our reality check from last May. Where we had to make changes that none of us were really thrilled about making but in order to resolve our budgetary objectives we transferred the money out of PAYGO. Now it turns out we have more money. This is as Mr. Subin said the perfect opportunity to sock it away and we can spend it. Let's spend it on the things that we want to spend it. We know we can spend it on in the budgetary process. I think it offers us as Mr. Subin says more flexibility, not less, to address the variety of needs and look at a variety of solutions. So I appreciate Mr. Subin's suggestion to ratchet this up. That will only increase our flexibility I think. I think we will have more options rather than fewer which would be the result otherwise.

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Council President Leventhal,
Mr. Silverman.

Councilmember Silverman,

Thank you, Mr. President. With all due respect to my colleague down the row I couldn't disagree more, this actually provides less flexibility. We're taking away \$6 million in bond capacity and using cash for it. How does that increase our flexibility? The maximum flexibility we have is the ability to do our bond limits at this level and, oh, by the way, decide at the appropriate time to go ahead and say, "Well, we don't want to float as many bonds, what we want to do is use cash." Mr. Subin is right we're going to make this ultimate decision in the spring. I would comment that I didn't use the word "fiscally irresponsible." I said I didn't think this was a fiscally responsible place to go without there being some data in front of us to make decisions. We all know what this decision is all about. It's all about how many votes it takes to pass a budget in the spring. That's exactly the same discussion we had a year ago. It's exactly the same discussion we're going to have here, and to change our Spending Affordability Guidelines in the spring requires a super majority.

Council President Leventhal,

The vote is on the motion by Mr. Subin to increase by \$6 million the amount set aside for PAYGO. Those in favor of the motion will signify by raising their hands. That would be Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Knapp, Mr. Andrews, Ms. Praisner. Those opposed will signify by raising their hands. That would be Mr. Perez, Mr. Leventhal, and Mr. Silverman. Motion carries. That will take us to the rest of the Committee's recommendation on the Spending Affordability Guidelines. Those in favor will signify by raising their hands. The Committee's recommendation as amended passes unanimously. That will conclude the Spending Affordability Guidelines and we move into District Council session. I'm sorry, Ms. Floreen has a comment.

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Councilmember Floreen,

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1 Well, I just wanted to say I think -- I just want to clarify that what we're doing really is
2 amending the resolution that was before us that addressed the -- the PAYGO number.
3 That is not just a Spending Affordability issue. I just wanted to direct the staff's attention
4 to the need to correct that appropriately.

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5
6 Council President Leventhal,
7 Thank you, also amending the PAYGO number. Very good. Thank you, Ms. Floreen.

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8
9 Chuck Sherer,
10 Mr. Leventhal.

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11
12 Council President Leventhal,
13 Mr. Sherer.

14
15 Chuck Sherer,
16 The resolution to amend the PAYGO resolution we have now scheduled for January,
17 you're not doing that today.

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18
19 Council President Leventhal,
20 And we'll be back again on Spending Affordability Guidelines, also. So this is a never-
21 ending story. Mr. Knapp.

22
23 Councilmember Knapp,
24 Thank you. Sorry, I should have done this on the Consent Calendar, I apologize. Just --
25 I wanted to follow up. I know that Joe Beach is with us and I'd raised an issue last week
26 as it related to flu vaccines and I just wanted to see if we had made any progress. I
27 know a memo went over, I talked to Joe briefly during the week. I just -- with each
28 passing week we're just exposing our Public Safety officials to increased risk, and I just
29 think it's important for us to move on this. And, unfortunately, weeks go by and
30 decisions sometimes don't get made, and I just wanted to see if there's any clarification
31 or follow-up yet.

32
33 Council President Leventhal,
34 Mr. Beach.

35
36 Joe Beach,
37 Yes, I'll have response to all the 14 questions this afternoon. I'm just finishing them right
38 now and, more importantly, we're organizing a meeting with all the HHS OHR fire and
39 police to make sure we can expedite giving the vaccines. Okay. Good. Good, that's the
40 most important part. Okay, thank you, Joe. Thank you, Mr. President.

41
42 Council President Leventhal,

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for its form or content. Please note that errors and/or omissions may have occurred.



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1 Okay, we're in District Council session, Item A, Introduction of Zoning Text Amendment
2 05-22 Transit Station Zones, Central Business District, sponsored by Councilmembers
3 Denis and Perez. Mr. Denis.

4
5 Councilmember Denis,
6 Thank you, Mr. President. I want to thank our colleague, Councilmember Tom Perez for
7 sponsoring this matter with me. Today I am filing a Zoning Text Amendment to make
8 the expectation for Parking Lot 31 in downtown Bethesda feasible. As is well-known the
9 1992 Bethesda Central Business District Sector Plan calls for the enhancement of Lot
10 31, which is owned by the County, as housing atop a new and desperately needed
11 underground County parking garage. Lot 31 is across from Barnes and Noble in
12 Bethesda and I brought this map with me, I would like to point out where it is for the
13 Council. This is Lot 31 right over here. This is Lot -- this is 31A, directly across the
14 street. I think that's significant. And I just point out the location. I want to maybe
15 apologize to Dr. Orlin and any others who have a problem with the Bethesda [Eight].
16 This was the best map that I had. It's a promotion for the free bus service that we have
17 in the Central Business District. The proposal selected by the County Executive
18 includes the smaller Lot, 31A, just to the east, across the street from Lot 31. The
19 problem is that Lot 31 and Lot 31A are zoned differently. In addition Lot 31A is located
20 in the Bethesda Central Business District while Lot 31, just across the street, is not.
21 Despite the adjacency of the lots the differences in location and zoning would, absent
22 the Zoning Text Amendment, require two separate zoning applications with two different
23 rules and procedures. This is absurd. The Zoning Text Amendment I'm introducing
24 today does not grant anything, nor does it indicate approval of a plan. What it does is
25 allow for this project to be considered under a single zoning application on a single
26 schedule. This will allow for a single unified development plan, subdivision plan, and site
27 plan. A unified plan will enable location closer towards Wisconsin Avenue and away
28 from the neighboring single family neighborhoods. A unified plan will also facilitate
29 safety improvements to the bizarre and dangerous intersection of Woodmont Avenue
30 and Bethesda Avenue. I look forward to the public hearing on January 24 before the
31 Transportation and Environment Committee. Again, I thank Councilmember Perez for
32 cosponsoring the Zoning Text Amendment with me, and I look forward to any other
33 comments that members might make. Thank you, Mr. Chairman.

34
35 Ralph Wilson,
36 If I may make one clarification. The cover memo says January 25th. But you're right the
37 public hearing resolution is January 24th, so that's a correct date.

38
39 Councilmember Denis,
40 Thank you.

41
42 Council President Leventhal,
43 Okay. Thank you, Mr. Denis. We need action...

44
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1 Councilmember Praisner,
2 We need a motion?

3
4 Council President Leventhal,
5 We need a motion on a resolution to establish a public hearing.

6
7 Councilmember Praisner,
8 I'll second Mr. Denis' motion.

9
10 Council President Leventhal,
11 Mr. Perez wanted to comment as well.

12
13 Councilmember Perez,
14 Thank you. I'm very excited to cosponsor this with Mr. Denis, a picture in tells a
15 thousand words, the picture you outlined here outlines a need for this text amendment.
16 We spent, frankly I wish the before the Lot 31 project had been underway, I'm sure
17 hindsight is 20/20. It would have been nice to do this a year ago. When this project was
18 contemplated it was always contemplated as one project. And it's regrettable that we're
19 now, we've awarded the project and into the next phases and we discovery that we
20 have this next issue. In the idea world this would have been done a year and a half ago,
21 but it wasn't. But there is still plenty of time to fix that and having one process certainly I
22 think is in the public interest and that is why I was more than willing to cosponsor this. I
23 think it's a sensible measure that applies not only there but in all Central Business
24 Districts and I'm right now I have asked staff to give us an inventory on when there are
25 any other situations that are comparable. So as we review this obviously with an eye
26 towards Bethesda we can be looking at Silver Spring and Wheaton to figure out what
27 other application is there. So happy to cosponsor it with Mr. Denis and I'm looking
28 forward to getting that information, Mr. Wilson, in terms of its -- whether we have other
29 properties that are affected in Wheaton and Silver Spring.

30
31 Council President Leventhal,
32 Okay, we have a motion made and seconded to establish the public hearing for January
33 24th at 1:30. Those in favor will signify by raising their hands. Any opposed? None
34 opposed. Our next item is introduction of Zoning Text Amendment 05-23, TDR
35 Easement, Non-residential Uses. Sponsored by Councilmembers Subin and Floreen.
36 Mr. Subin.

37
38 Councilmember Subin,
39 I believe Mr. Knapp should also have been named on that.

40
41 Council President Leventhal,
42 We'll have Mr. Knapp added as a cosponsor. And we need a motion to establish a
43 public hearing.

44
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Unidentified Speaker,
[INAUDIBLE]

Council President Leventhal,
Motion is made and seconded to establish a public hearing January 19th at 7:00 p.m.
Those in favor will signify by raising their hands. Any opposed? No one is opposed we
have the public hearing established. Mr. Silverman has a question.

Councilmember Silverman,
I'm sorry, I just wanted to ask the sponsors what the purpose of the Zoning Text
Amendment is? Because I don't see I see an explanation of what it literally is, but I'm
trying to understand what problem it is attempting to address.

Council President Leventhal,
Ms. Floreen?

Councilmember Floreen,
Well, what we have discovered in the course of the PIF analysis is that properties were
developing -- institutional uses were occurring on land regardless of the TDR easement.
And this is in an effort to make it clear that that was not the intention that that occur. And
I will just say in working with members of the agricultural community on the next step
that we hope to take, with respect to acquiring that lost easement. It's been very clear in
the regulations that -- the language of how things have been written have lead to that
conclusion, and it's only appropriate to bring it back to the original intention.

Councilmember Silverman,
Okay, thank you.

Council President Leventhal,
Okay, next we have introduction of Subdivision Regulation Amendment 05-05, Planning
Board Actions Enforcement sponsored by the District Council. We need a resolution to
establish a public hearing for January 17th. The motion is made, and thank you, Mr.
Andrews, for your second. We will establish the public hearing by raising our hands.
Any opposed? None opposed. Next we have Subdivision Regulation Amendment 05-
06. Subdivision and site plans coordination with other agencies, sponsored by
Councilmember Silverman. We have a resolution to establish a public hearing to
establish a public hearing moved by Mr. Silverman, second by Ms. Praisner. Those in
favor of the resolution will signify by raising their hands. Any opposed. None opposed.
Mr. Silverman.

Councilmember Silverman,
Thank you, I figured since I asked a question about the other one I will explain what this
is. This is part of the continuing effort at transparency and accountability at the Planning
Board. It makes sure that awful the relevant agencies which include the Fire and

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1 Rescue service sign off in writing on a subdivision plan before it can move forward and
2 it gives them a deadline which is 30 days for doing it which can be extended in the
3 legislation. We now apparently -- we had a situation where Park and Planning was
4 okaying subdivisions without a response back from the appropriate departments and
5 agencies. So they've taken the position that they're not approving anything until they get
6 something back. Which is fine except that we ought to require the agencies to respond
7 within a specified period of time so that there is some effort to make sure that they will
8 be responsive as part of the subdivision review process and allow people a opportunity
9 to be able to see what the outside agencies feel about this. This is in affect trying to
10 institutionalize one of the practices that they have started. Thank you, Mr. President.

11
12 Council President Leventhal,
13 Okay, that then takes us to Item "C" which is oral argument and consideration of
14 hearing examiner's...

15
16 Councilmember Praisner,
17 Did we do the public hearing on Damascus?

18
19 Council President Leventhal,
20 We did -- Oh, public hearing on Damascus Master Plan, thank you. We need a
21 resolution to establish a public hearing on the Damascus Master Plan for January 24th
22 at 7:30 p.m. Move and seconded, those in favor of establishing...

23
24 Marlene Michaelson,
25 I just want to correct for the record. We did get the fiscal analysis on the 13th instead of
26 the 12th. And since we do count days, that does become a important trivial matter.

27
28 Councilmember Praisner,
29 December 13th, not December 12th.

30
31 Marlene Michaelson,
32 December 13th, right. We expected it yesterday, we got it this morning.

33
34 Council President Leventhal,
35 Right, so the resolution on that is before the Council, Agenda Item Number 5 is
36 corrected. In the background section of Agenda Item Number 5. Does the clerk have
37 this language? Okay. Okay. So the fiscal impact analysis was received on December
38 13th. That correction is made and the resolution as corrected is before the Council,
39 those in favor will signify by raising their hands. Any opposed? Hearing none the
40 resolution passes. We go to Item "C" Oral Argument and Consideration of Hearing
41 Examiner's Report and Recommendation On Application Number G-834. The applicant
42 is Porten Companies, there will be 15 minutes for oral argument from each side. Ms.
43 Sears.

44
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1 Barbara Sears,
2 Good morning. My name is Barbara Sears. I represent the applicant, Porten Company. I
3 would like to split the time ten minutes for the argument and five minute for rebuttal. The
4 property that is the subject of this application is 5.3 acres. It's located on Route 28,
5 Darnestown Road. Approximately 1,000 miles east of Quince Orchard Road.
6
7 Council President Leventhal,
8 1,000 feet.
9
10 Barbara Sears,
11 1,000 feet. 1,000 miles, I said?
12
13 Council President Leventhal,
14 That would place it roughly in Indiana.
15
16 Multiple Speakers,
17 [laughter]
18
19 Council President Leventhal,
20 Right.
21
22 Barbara Sears,
23 Maybe I do better there.
24
25 Council President Leventhal,
26 Oh, east, yes that would be...
27
28 Barbara Sears,
29 It was granted session exception in 1971. That was for a commercial nursery. That has
30 been expanded and has grown over the years. And it's called Potomac Garden Center,
31 Bob Angel, who is here, is the owner. He's operated it for about 20 years. The site is
32 very intensely developed. I'm going to have Ms. Cheng, who is with me today, to pass
33 out what was an exhibit in the hearing which shows the site in relation to the
34 surrounding area. It is a landscape contracting retail sales activities, approximately 60%
35 of the site is covered with impervious area. In 2004, Mr. Angel decided to sell the
36 property and in the fall of 2004, entered into the contract with Porten. After consulting
37 with Park and Planning staff this Local Map Amendment for RT-8 was filed as well as a
38 Schematic Development Plan under the Optional Method illustrating 39 units which was
39 suggested by staff to ensure compatibility. The Planning staff, Zoning, Community
40 Plans, et cetera, all recommended approval after a very long rigorous review and the
41 Planning Board hearing was held. They too recommended approval. The hearing
42 examiner has recommended, however, denial. and we ask for this oral argument, an
43 approval or alternatively an amendment be allowed to SDP to address the issues raised
44 by the hearing examiner. First we believe the hearing examiner erred in not using the

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1 correct legal standard to assess the compatibility with the master plan. The Potomac
2 Subregion Master Plan was adopted by you in March, 2002, by Resolution 141170. In
3 two paragraphs at page 57 and 58 of the hearing examiner's report he merely states
4 that the master plan recommends R-200 TDR for the site. That the property is not
5 recommended for RT-8 and, showing compliance as we did with the goals and
6 objectives of the master plan was insufficient for a finding of compliance with the master
7 plan. He suggests that a master plan amendment for this property is necessary. We find
8 this finding ignores Maryland law with regard to floating zones and prior Council action
9 as well as the evidence of record, which shows the confusion surrounding the underlying
10 R-200/TDR density. First the RT-8 is a floating zone. Based on Maryland law, [Bigeno],
11 and others it floats over and comes down when the property owner requests an
12 application. It does not have to be recommended in the master plan. Importantly, there
13 is absolutely nothing unusual about this master plan, the Potomac master plan, as
14 suggested by the opposition, the hearing examiner. The language cited as being
15 unusual and actually preventing in essence a floating zone merely states that they
16 looked at specific parcels with regards to changes of zoning and they highlighted those
17 in the master plan. As Mr. [Blumburg], our expert in land planning testified, he spoke
18 with Mr. Callum Murray who I'm sure you know and he shepherded through the master
19 plan. He explained that this property was not included for any specific recommendation
20 or zoning because it was a ongoing commercial use. It was a special exception, which
21 was intended or felt would continue in the future. The property owner did not participate
22 in the master plan and the supposition was made by the Board, Advisory Committee,
23 and Planners that the use would continue. They looked at it quite clearly as an ongoing
24 commercial use to continue. There wasn't a careful weighing of comparative densities or
25 alternative zones if it stopped, it was just considered part of a commercial operation,
26 and things changed. 2 1/2 years later this property owner decided he would sell the
27 property. He didn't contemplate that when the master plan was done. That could've
28 happened at ten years or five years, it happened two and a half years, and he entered
29 into the contract. We also presented substantial evidence of confusion regarding the
30 density. If you look at the Planning Board draft of this master plan which was October,
31 2001, and you look at the District's Council resolution adopting the plan which was
32 March 5, 2002. There is no language of a limitation on density in the R-200/TDR zone.
33 That would mean under the zone you could have 11 units per acre. There was nothing
34 that anyone would have seen in that master plan, looking at that master plan, which
35 would have limited that. Later, in May of 2005, the interim draft was published. At that
36 point language was added, that was not in the resolution, that stated that you had to go
37 back to the '82 amendment to the Potomac plan and incorporate that and that limited
38 this property and the surrounding properties to a TDR-3. However this property, and you
39 had to assemble 10 acres according to that amendment. But it's impossible to assemble
40 10 acres here, there is only 5.3 acres, basically, so the recommendation makes no
41 sense, the logic makes no sense, and having that language appear when it wasn't in the
42 resolution or underlying plan multiple years later does not engender an expectation that
43 this would be a three density. It's unfair I think to this property owner to say that you
44 have to have a master plan amendment, it undercuts the hearing examiner's primary

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1 argument that there was something unusual about this master plan and there was a
2 careful consideration of the density. We would also point you to the Country Corner site,
3 just down the street, where it was a ongoing special exception for a nursery where the
4 property owner entered into a contract at the time of the master plan and it was
5 recommended for TDR-10. And it was surrounded on two sides by single family
6 detached and by a institution on one side and was on Route 28. The evidence here also
7 shows that it was improper for the hearing examiner not to consider the evidence of
8 substantial compliance with the objectives of the master plan. That was the proper
9 standard that he should have used and clearly that was done. The evidence shows that
10 it complies. It minimizes special exceptions on major transportation corridors. It provides
11 stormwater management, it minimizes impervious areas, it provides pedestrian links. It
12 concentrates development in suitable areas served by public facilities, it directs growth
13 to population centers, it does all of the objectives that are cited in the master plan.
14 Second, the hearing examiner erred in not finding compliance with the purpose clause.
15 This was an appropriate density. That is the argument that was being made. That is the
16 argument that the Planning staff found, that the density was appropriate, and that is the
17 argument that the applicant made, and that is the argument that the Board supported.
18 There are 67 townhouses in the surrounding area, the surrounding area shown on the
19 aerial. There are 67 townhouses in Orchard Knolls, on the opposite side of the street.
20 There are some 69 townhouses, there are only 85, apparently, single family detached.
21 There is two commercial centers. There is a fire station adjacent, there is a collapse
22 rescue adjacent. There is a school, an elementary, Rachel Carson It is a mixed -- it is a
23 mixed type of community. It is not predominantly single family detached as found by the
24 hearing examiner. The compatibility, the density proposed here is 7.3 with the changes
25 we have stipulated we will make in reducing it to 35 units. It will be 6.61 units per acre.
26 The density in Orchard Knolls townhouses is 8.8 units per acre. Again, the examiner
27 found that technical staff did not weigh density. They certainly did. They made the
28 applicant change the SDP, Change the stipulated binding elements, to create very large
29 setbacks, adjacent to the single family detached homes. Compatibility. The examiner
30 failed to consider.

31 Council President Leventhal,
32 Okay, thank you. I understand Mr. Gardner is here with the other side of the story.

33 David Gardner,
34 Thank you. Thank you, Mr. Chairman, Mr. President, and members of the District
35 Council.

36 Council President Leventhal,
37 Press your microphone, the button there. And if you could introduce yourself for the
38 record, please.

39 David Gardner,

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1 My name is David Gardner. I'm here as counsel on behalf of the residents who surround
2 the subject site and the Orchard Knolls Homeowners Association which contains the
3 149 homes which include the single families and the townhomes you've heard Ms.
4 Sears describe. In this case the hearing examiner heard two full days of testimony,
5 prepared a comprehensive 59 page report that you have before you recommending
6 denial of the application. In his report the hearing examiner found the proposed
7 rezoning failed to meet any of the four requirements for rezoning, which are the same
8 issues that Council's agreed to hear argument on this morning. In particular the hearing
9 examiner found the following: The proposed rezoning does not comply with the
10 recommendations of the Potomac Subregion master plan. Does not meet the
11 requirements of the purpose clause of the RT-8 zone, because it's inappropriate for
12 development at the location and the density sought. Is not compatible with existing and
13 planned land uses in the surrounding area, and is not in the public interest. All four of
14 these of these requirements must be found to have been met in order for this
15 application to succeed. Review the record which includes 596 pages of transcript and
16 70 exhibits introduced during the hearing demonstrates the hearing examiner properly
17 considered all the evidence including the divided recommendations of the Planning
18 Board, and came to a well-reasoned conclusion that the applicant should not be
19 granted. His reasons are well founded, based on proper legal standards, and my clients
20 request the Council follow his recommendation and deny the application to rezone the
21 Potomac Gardens property from R-200/TDR to RT-8. In support I will review each of the
22 four issues reviewed by the hearing examiner. First: conformity to the master plan. The
23 Potomac Subregion master plan was approved and adopted in 2002. The plan divides
24 Potomac into four community areas: Potomac, Travilah, Darnestown, and North
25 Potomac. The subject property's located in North Potomac. The hearing examiner found
26 that the master plan explicitly recommends the entire area in which the subject property
27 is located remain classified under R-200/TDR zone. In support the hearing examiner
28 quoted the following portions of the master plan, and I quote from page 57 of his report.
29 "The land use and zoning recommendations for the Subregion highlight those parcels or
30 areas recommended for a change in use or density. Each site was evaluated in the
31 context of the overall objectives of this plan as well as for the compatibility with the
32 surrounding community. Environmental constraints, types of uses, buffering access,
33 and" -- underlined -- "the comparative density of nearby properties were considered in
34 determining compatibility. The plan supports the retention and reconfirmation of existing
35 zoning for all," stop underlined, and this is from the hearing examiner, "developed,"
36 underlined, "underdeveloped and undeveloped land in the Subregion except for those
37 sites recommended for change in the plan." The hearing examiner noted the subject
38 property was not singled out for rezoning and that the density for the subject property is
39 R-200/TDR, the same density as the 1982 master plan. The applicant claims the
40 appropriate density for R-200/TDR zoned parcels in North Potomac should be viewed
41 as the maximum density for the TDR zone, or 11 units per acre. This is clearly wrong.
42 Any new master plan is an amendment to a previously adopted master plan. In this
43 case the 1982 master plan explicitly recommended the density for the R-200/TDR
44 zoned parcels in North Potomac, and it's not just this one, by the way, it's the entire

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1 area south of that yellow on that map. All of that single family land is TDR/R-200.
2 Recommended that this be retained and reconfirmed unless recommended for a
3 change in the plan. The first time it was challenged was by the applicant in this case. So
4 the interim edition of the master plan, which was published in April of 2002 added a
5 sentence in Appendix 8 of the master plan stating that the densities for the TDR
6 receiving areas would remain as designated in the 1982 amendment unless those
7 densities were amended by the master plan. This language was quoted and relied on in
8 the Planning Board staff draft and the hearing examiner's report which both conclude
9 the density recommended for the R-200/TDR parcels in North Potomac was established
10 at 3 units per acre in the 1982 master plan amendment which was incorporated by
11 reference into the 2002 master plan. In particular the 2002 master plan states the
12 following: "This plan designates several parcels of land for TDR receiving areas and
13 removes the designation from others. Receiving areas may be permitted to develop to a
14 specified density greater than the base zoning. Unless amended by this master plan
15 these specified densities remain as designated in the 1982 amendment." What Ms.
16 Sears is remembering to is this copy, October, 2001. The Planning Board staff -- the
17 Planning Board draft didn't contain that explicit reference to the 1982 amendment. But it
18 does contain the language "This plan supports the retention and reconfirmation of
19 existing zoning for all developed underdeveloped, and undeveloped land in the
20 Subregion except for those sites recommend for change in the plan. It states that it
21 retains existing density. Ms. Sears says that language isn't explicit enough. So, in 2002
22 -- April 2002 -- the interim addition in Appendix A included the language that I just
23 stated. That unless amended by this master plan these specified densities remain as
24 designated in the 1982 amendment. Explicitly states it, what explicitly stated in 2001,
25 and was not challenged by anyone except the applicant in this case that the R-200/TDR
26 zone is recommended for TDR-3 density. Based on this language the hearing examiner
27 concluded the applicant to rezone the property with a maximum density of three units
28 per acre to RT-8 with a maximum density of 8 units per acre violates the explicit
29 recommendations of the master plan. While the applicant is correct in asserting the
30 master plan recommendations are not dispositive in a floating zone case, they do serve
31 as a guide for the decision-maker. Which is why the Council requested this issue be
32 addressed today. In this case the master plan explicitly states the densities in the R-
33 200/TDR zoned properties in the area surrounding the subject site should not be
34 modified and the appropriate way to amend that recommendation, as indicated by the
35 hearing examiner, would be to amend the master plan. The second issue is whether or
36 not the purpose and requirements in the RT-8 zone, the appropriateness standard, has
37 been met in this case. The purpose clause requires that the RT-8 zone is to provide
38 suitable sites for townhouses in sections of the County that are designated or
39 appropriate for residential development at densities allowed in the RT zones. Or in
40 locations in the County where there is a need for buffer or transition uses between
41 commercial/industrial or high density apartment uses and low density one family uses.
42 In this case the staff report originally concluded the site was both designated and
43 appropriate for development at densities allowed in the RT zone. Recommend approval
44 on that basis. This report, introduced as Exhibit 56 was later corrected by staff to

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1 indicate it was not designated for residential development at densities allowed in the
2 RT-8 zone, but concluded it was appropriate for this density. The hearing examiner also
3 concluded this site is not designated for these densities, and even the applicant
4 concedes the point. The hearing examiner further found the site does not satisfy the
5 buffering or transition argument that the site is in a location where there is a need for a
6 transition between commercial/industrial or high density apartment uses and low density
7 single family uses because the fire house located next to the site is not a commercial or
8 Industrial use. Indeed, if it were so to find the existence of a fire house anywhere in the
9 County could serve as a potential basis for a rezoning request. So this leaves the entire
10 application on the bong in the purpose clause, namely that this rezoning is an
11 appropriate density for the location. In reviewing this issue the hearing examiner noted
12 the word "appropriate" is not defined in the zoning ordinance, but is linked to the word
13 "location" and "density." Thus he found one must look to each case to determine if there
14 is a proper fit given the location, the site, and the density sought. The hearing examiner
15 then concluded the site is not appropriate for RT-8 zoning for a number of reasons. First
16 he reviewed other sites that have been rezoned to RT-8, including the Stoneybrook and
17 Giancola Quarries, which are south on River Road near the Capitol Beltway. Found that
18 these were not sufficient to establish a precedent. Second he found that the proposed
19 development would increase density between 2.6 and 4.2 times the comparative
20 densities of planned and adjacent uses and would create in his words, "an island of
21 higher density amidst a sea of low-density development." And third he found that the
22 townhomes in the nearby community were developed as part of a common plan of
23 development which allowed for diversity in housing styles by separating them from the
24 adjoining single family homes -- these are the townhomes shown in the picture
25 presented to you -- They're separated by a road, by vegetation, and by distance that
26 isn't available on the subject site. It's located on a small 5-acre parcel. Is not part of a
27 integrated development. This entire development was done under a TDR cluster zone.
28 Where the townhomes were developed originally is part of an entire site plan where
29 they could be rendered compatible with the existing single family homes. Moreover, the
30 subject site, you can't tell from this picture, is elevated from 10 to 15 feet higher than the
31 adjoining single family homes, will not have as great a setback, nor will it be separated
32 by a road separation from the single family homes up Blackberry Drive, which would be
33 rendered basically an island of development separate -- between the two townhome
34 developments adjoining it. In this request for oral argument the applicant challenges the
35 density calculations used by the hearing examiner. These were based on the
36 assumption the development would yield 42 units, because it had not introduced any
37 evidence as to the location or number of MPDUs. Indeed, he also compared it to ten
38 single family homes on the site which is what both experts in this case conceded would
39 be developed under the R200 zone. The hearing examiner went further and compared
40 the proposed density to the existing density in the community, which is three units per
41 acre, and determined that by increased density to eight units per acre it would result in
42 an increase of 2.6. Thus the density increase was properly found to be between 2.6 and
43 4.2 times the current density. The third issue is the compatibility of the proposed
44 development. In evaluating compatibility, the hearing examiner considered the impact of

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1 the proposed townhomes on the existing community. Concluded they would present a
2 incompatible form of development. In considering this the hearing examiner found that
3 because the base of the townhomes would be between 10 and 15 feet higher than the
4 surrounding single family neighborhood and the peak of the roofs 24 to 27-feet higher
5 than the peak of the existing homes they would create a unwarranted intrusion into the
6 privacy of adjoining single family homes. The hearing examiner considered the fact that
7 the existing homes on the east side of Blackberry were part of an integrated
8 development approved as a single subdivision, at the same elevation, and with ample
9 setbacks and a road separating them from the nearest single family homes. In its
10 request for oral argument the applicant cites the fact that the townhomes will be no
11 closer than 96 feet to the nearest single family home. However, this compares to 135
12 feet for the nearest townhomes, again these are 135 feet from the nearest single family
13 home. In fact even under the revised Schematic Development Plan the proposed
14 townhomes would be only 20 feet further away from the single family homes, meaning
15 they will now be 116 feet from the nearest single family, which is still closer than the
16 existing townhomes in Orchard Knolls. I'm running out of time. I'll try to jump through the
17 public interest. The hearing examiner found the proposed application does not comply
18 with the public interest because it does not conform to the explicit recommendations of
19 the master plan and the technical staff failed to evaluate the critical density issue and
20 because the applicant did not propose any public amenities in the form of MPDUs. And
21 by the way I will point out in the Planning Board staff report, Callum Murray found, and I
22 quote, "It appears the original intent to was to continue Citrus Grove Road," which is this
23 road, "through to the north, possibly culminating in a cul-de-sac with access for a few
24 single detached dwellings," which both experts said would be about 10 single families.
25 His report then went on to note that "This would have been the type of development
26 most compatible with the adjacent Quince Orchard Knolls subdivision." In this case, the
27 applicants contending we should compare this, again, to the R-200 development. That
28 R-200 homes will actually be closer to the single family homes than the proposed
29 townhomes. But we have no site plan that's been drawn that would show that. And I
30 think logic would suggest otherwise that there basically would be a spine road through
31 the middle of this development, and the single family homes would be located close to
32 that road with wide backyards providing the ample setbacks to the adjoining single
33 family homes. And, indeed, Callum Murray found that was so. The hearing examiner
34 found in this case the environmental benefits of the proposed development are not
35 persuasive because development under the existing zoning would generate similar
36 environmental benefits. The applicant has not challenged this last finding, because its
37 own experts admitted on cross-examination these environmental benefits would be
38 realized if the property's developed under current zoning. The applicant now offers to
39 include five MPDUs in its revised SDP, for the first time, and claims this should be
40 considered in connection with the application. This evidence was not presented to the
41 hearing examiner. Indeed, upon cross-examination, executive vice president of Porten
42 Companies admitted the applicant had not decided how many, if any, MPDUs would be
43 provided. The decision to provide five MPDUs this late in the process should not provide
44 justification for a three-fold increase in density or for a development that is not in

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1 compliance with the recommendation for the Potomac Subregion master plan. To open
2 up the Potomac master plan for rezoning... I guess I'm done.

3
4 Council President Leventhal,
5 Okay, you have five more minutes, Ms. Sears.

6
7 Barbara Sears,

8 Thank you. First of all I think it's clear that the resolution the Council adopted December,
9 2002, is the standard for determining what language is in the master plan. You can't
10 three years later add that language just without Council approval. Second we argued
11 the appropriateness of RT-8. We did not try to argue, and try to argue that it was an 11
12 density. We're pointing that out to show that the examiner erred in saying it was so clear
13 that this density should be compared to a 3 units per acre. Secondly on compatibility.

14 The nearest -- this is the nearest house right here on Lot 4. What the SDP did was say
15 that we had to have a 60-foot setback from the lot line from our property line. And that
16 would result in a separation of over 96 feet. That 96 feet would have a berm that is in
17 existence. The SDP required that the berm grade, which is 5 to 6 feet, be maintain and
18 that that berm, vegetation, would are 28-foot trees as established by Mr. Gardner in the
19 hearing would remain and that we would supplement those tree was another row of
20 evergreen trees, so we have a situation as shown on these sections where the closest
21 house, Ms. Cheng if you want to bring up Section "A". We're lowering, as determined by
22 the applicant the townhome. It's an end unit. It would look out and you would see
23 nothing but trees. It was admitted that you would not see from the backyards of these
24 houses anything in terms of these townhouses. That's the closest. The others are
25 proportionately farther away. We have suggested that we could add another 20 feet to
26 that which would come about the width of this townhouse and we could make sure that
27 this was 80 feet in the rear so you would have separations that are approaching 160
28 feet. So, as far as compatibility. We have achieved that through our SDP binding
29 elements. We have agreed to maintain, preserve, and put a landscape easement on the
30 berm and that it would be preserved and maintained in perpetuity. We have achieved
31 that kind of compatibility as suggested by staff and we're willing to increase it. As to a
32 comparative density, if we look at R-200 we see that it has a 50-foot height. We look at
33 RT-8, it has a 35-foot height. R-200 would not have a site plan, R-200 would have a 30-
34 foot rear yard. This, as we have seen, would have a minimum of 80 feet in the critical
35 area. As far as compatibility, and even using a comparison, it is much more compatible
36 situation than you could achieve with an R-200 development. Public purpose, we're
37 providing stormwater management where none exists. We're decreasing the impervious
38 area by 34%. We are providing less traffic than the current use. The comparison should
39 be with the current use. We are cleaning up that use. We're putting in a valid housing
40 use in an area which is the most populous area in the Potomac area, the North
41 Potomac area. We have agreed that if it's a problem, we can stipulate that we will do
42 MPDUs, we will do 12.5 percent of whatever number comes out of the site plan review
43 of this procedure. We know one thing, under R-200 there would be zero MPDUs. If we
44 reduce the density from 39 to 35 and stipulate to it so we can get the increased

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1 setbacks. Everybody including the citizens did not want this road to come through. Park
2 and Planning did not want this road to come through. We cannot guarantee that if this
3 application does not go forward there will be an R-200 single family detached. The
4 evidence was it would be more valuable to leave the commercial use. So what we can
5 assure is we will have MPDUs, we will have a compatible use, we will have something
6 that's very much in the public interest. We will reduce traffic. We have schools right next
7 door. We have all of the public facilities, nobody disputed that.

8
9 Council President Leventhal,
10 Mr. Gardner.

11
12 David Gardner,
13 Do I get a chance to rebut?

14
15 Council President Leventhal,
16 You used your entire 15.

17
18 David Gardner,
19 Okay, yes. Thank you.

20
21 Council President Leventhal,
22 Okay, there are questions. Ms. Floreen.

23
24 Councilmember Floreen,
25 I don't have a question.

26
27 Council President Leventhal,
28 Well you have the floor.

29
30 Councilmember Floreen,
31 I just want to say I appreciate the arguments here. This is I'll tell you I'm looking at the
32 map just of the relationship between the what is proposed and the existing community.
33 And I'm remain -- persuaded by the hearing examiner's recommendation of denial,
34 particularly on the issue of whether or not there is a need for a transition here. Property
35 surrounded on two sides by single family detached units suggests to me that the
36 transition would be a consistent building style rather than a different housing type. And
37 while I am fully in support of our housing needs and affordable housing, in particular, I
38 don't think that's a justification for granting a change in zoning categorization. I would
39 move, the staff gets the hearing examiner's recommendation and denial of the
40 application.

41
42 Council President Leventhal,
43 Okay the hearing examiner's recommendation has been moved and seconded, Mr.
44 Subin.

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1
2 Councilmember Subin,
3 Thank you, Mr. President. I'm not sure where to start here, First of all I think my -- one of
4 my biggest problems here is, moving from the R-200/TDR to the RT-8 you're eliminating
5 TDRs. I'm not persuaded by the argument that in exchange for that you would get some
6 MPDUs because on the other side of Darnestown Road there that whole community is a
7 community that is not labeled MPDU but is the equivalent. So, from a policy perspective
8 you have a clash of policies. Ms. Sears.

9
10 Barbara Sears,
11 I was just going to point out if we accept the hearing examiner's argument than you
12 have to have ten acres, and so you would not get TDRs, and that's why we filed RT-8
13 as the appropriate density. So it's an impossible to implement.

14
15 Councilmember Subin,
16 No, it's not impossible.

17
18 Barbara Sears,
19 Well you can't assemble 10 acres.

20
21 Councilmember Subin,
22 Well, they can always buy TDRs.

23
24 Barbara Sears,
25 But they're developed around it.

26
27 Councilmember Subin,
28 In addition this may be a part of North Potomac, which generally is fairly densely
29 populated. But this is on the edge of North Potomac that is transitioning into an area
30 that is not developed. I can't agree on the compatibility issues, because you can see
31 simply by the illustration that is up on the board, the single family homes are roughly 10
32 feet lower than the townhouses would be. And so you can put in more trees, but if the
33 trees grows as high as the townhouse -- I'm not going to get into the 35 feet versus 3-
34 story issue here -- it's still, going to be higher than the buffering that's there now. And so
35 those single family homes will be looking up right into a sea of townhouses which
36 certainly is not compatible with what is there now. I'm also persuaded by Mr. Gardner's
37 argument of the policy issues of the master plan to the master plan which retain
38 language on the R-200/TDR. And maybe, by law you could put a floating zone there, it
39 doesn't mean you have to put a floating zone there. That ends up being a policy
40 decision, not a legal decision. So for all of those reasons I will join Ms. Floreen.

41
42 Council President Leventhal,
43 Mr. Andrews.

44
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1 Councilmember Andrews,
2 Thank you Mr. President. I agree very much with what my colleagues have said about
3 this in terms of commenting on the hearing examiner's report. I think the key issue for
4 me is the compatibility of this site in terms of its topography and in terms of what is
5 already there for the applicant's proposal. I think the hearing examiner got it right in
6 terms of assessing that it would not be compatible. That's the key issue here. I will also
7 vote to support the hearing examiner's recommendation to deny.

8
9 Council President Leventhal,
10 Ms. Praisner.

11
12 Councilmember Praisner,
13 I think this is obviously by the split vote of the Planning Board not a slam dunk one way
14 or the other. If you look at the properties to the west of this site, there are certainly,
15 nonresidential uses for which townhouses are an appropriate transition. Unfortunately,
16 though, I think given the topography and the layout of the single family residential
17 homes that exist plus the issues that are associated with the master plan and zoning I
18 have to come down at the same place as my colleague who have spoken already. It is
19 perhaps unfortunate that the way our master plan process evolves, unless someone
20 who is a property owner is at that point ready for redevelopment and comes forward
21 with proposals during that timing there are assumptions about parcels that continue
22 through the master plan process. But -- and that says something about how we review
23 master plans, but from the standpoint of compatibility and the transition and the
24 topography, I think that I have to come down on the side of conservative review of this
25 and would support the denial of the hearing examiner.

26
27 Council President Leventhal,
28 Mr. Perez.

29
30 Councilmember Perez,
31 I think you said at the end Ms. Sears, what is the -- if this is denied what is the
32 consequence?

33
34 Barbara Sears,
35 I was pointing out that if it was denied in public benefit, that none of the public benefits
36 that are associated with the application could be guaranteed. In other words it could
37 remain and may likely remain the nursery because of the values of the property. That
38 was the evidence that was presented. Therefore, you have great intrusion into the
39 stream valley and what was being proposed was a setting of the buffers, the
40 preservation of the stream valley, a restoration of the stream -- excuse me I have a sore
41 throat -- And...

42
43 Councilmember Perez,
44 Here, I have got some...

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Multiple Speakers,
[laughter]

Barbara Sears,
...Ms. Praisner needed some the other day too. But what was being proposed was a complete cleanup of that stream valley and reforestation, and also on-site stormwater management where there is none right now. So everything runs off of this and the evidence was clear that there was a tremendous amount of runoff and erosion, and all that would be cleaned up. Again we would also have site plan review. We would have the SDP with the stipulations on setbacks which could not be guaranteed -- certainly don't exist now and could not be guaranteed if it were ever redeveloped under R-200...

Councilmember Perez,
How many single family units could be -- what's the range?

Barbara Sears,
I think that it was theoretical about ten. But those could be 30 feet high off the property line and be 50 feet in height. Where these are limited to 35 feet in height. You could place these as end units against the areas of concern and have a much better orientation and assure that the grade of that berm and all the landscaping would be maintained. 'Cause we would place a conservation landscape easement on it and have HOA maintain and replanted as necessary. And that could be enforced through the site plan process as your bill just introduced, it's gonna get tighter. So we thought that it was a very good solution to replace this commercial use, which is very intense and environmentally not at all sensitive as this proposal would be, with all of the current stormwater laws, all the current forestation laws and the like. We also would you know reduce -- we also said, to address the examiner, we could amend the SDP, increase the setbacks, stipulate to 35 units and do the MPDUs and close the so-called gaps that we intended to close anyway in the tree line. So we thought that that would be yet another protection for everybody to have and it would be a much better community use.

Unidentified 190
Can you talk about the -- I mean the topography has all of us a little bit concerned.

Councilmember Perez,
I know Circle 77 again, the hearing examiner's report noted that the townhomes across the street don't appear to have that issue.

Barbara Sears,
They're about 8 to 9 feet higher in elevation than the existing single family. They don't have screening -- they have some screening but it's more like street trees and some shrubbery and so forth. So what we have done is have the large separation, have a large setback. Now with the amendment, if allowed it would set it back a minimum of

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1 126 feet. That's compared to 135 which exists now in the existing townhouse. It would
2 go further from there. So, we think the separation combined with the very tall trees that
3 are there, 28 feet, that exist there now, and the second row of evergreens and the
4 perpetual maintenance of them would sensitively treat the area and you would not see
5 anything either from the new townhouses or from the single family detached houses.
6

7 Councilmember Perez,

8 On your Section A there, I want to make sure I understand what you just said, it says
9 "proposed townhomes at the..." yeah, exactly, right there. If I understood what you just
10 said if you end up building a single family home there, assume this were denied and you
11 constructed a single family there did you say it could be up to 50 feet in height by right?
12

13 Barbara Sears,

14 Yes, by right. This is a 35-foot building. Actual height because the way you measure it
15 it's 42 feet. A 50-foot R-200 could -- actual height be 57 feet. And you could -- his is the
16 property line. We're setting in this picture 80 feet off of the property line. You could be
17 within 30 feet of the property line, which would mean you take down this berm and
18 these existing trees. We agreed to plant a second row of evergreens and we would also
19 do some planting here. And we would extend this to about here. So we would have this
20 much distance in between. I believe that the expert for the opposition testified it wasn't
21 so much that he felt people here in the backyards would have a problem seeing
22 townhouses, but that somebody in the upper reaches of the townhouse could look
23 through -- one gentlemen, and that was in Lot 4, had a skylight. Could potentially be an
24 invasion of privacy on the skylight. I would venture to say that you would not be able to
25 place a window. You would have to place it 6 or 7 feet down. You would be looking into
26 the trees, not through this gentlemen's skylight. Which -- because the rafters would be
27 boxed in anyway, and you wouldn't get the angle. I think we have tried to treat it -- and
28 this is the worst case. We're willing to 20 feet more and willing to delete these
29 townhouses here. Plant more trees. Delete this townhouse and have a good 80 feet
30 here. This road isn't going to come through, nobody wants it to come through. This is
31 the collapse rescue, this is the fire. The towns are sitting right here. We feel it is a
32 compatible use and compared to the commercial it's certainly a much more sensitive
33 use. And establishes finally, the use going forward on this property.
34

35 Council President Leventhal,
36 Mr. Knapp.
37

38 Councilmember Knapp,

39 Thank you, Mr. President. Barbara, I just wanted you to follow up a little bit, in your
40 discussion with Mr. Subin you were talking about the TDRs and how, if this were to
41 remain R-200 it wouldn't...
42

43 Barbara Sears,

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1 It would not be eligible for use of TDRs because the 1982 amendment that's supposedly
2 incorporated into the plan, which limits it to TDR-3, according to Mr. Tierny, that requires
3 an assemblage 10 acres and there is not the ability to assemble 10 acres and use
4 TDRs because this is a 5.3-acre basic site and it's developed all around it. So it's
5 impossible to use the zoning that was placed on it which, according to the argument,
6 was placed on it, and that's why we felt it wasn't so clear that this was a density of three.
7 We also felt it was unfair to say it's a three-fold increase when you have a transition for
8 example, you're transitioning townhouses to single family detached so you always have
9 a two, three, four-fold increase. It goes with the transition. So it's -- it's a meaningless
10 statement.

11
12 Council President Leventhal,
13 Mr. Subin.

14
15 Councilmember Subin,
16 Well, I would certainly concede that from a legal perspective you can't force the issue of
17 the TDRs, but what -- what has been done in the past is looking at the property, you
18 could say that it was the intent that TDRs would be used in that area and on those
19 properties. And as a concession have TDRs purchased, it wouldn't be the first time, and
20 it probably wouldn't be the last.

21
22 Barbara Sears,
23 You could do that through the SDP process. We've asked this SDP be remanded so we
24 could limit the density, expand the -- that's another thing we could look at.

25
26 Councilmember Subin,
27 Well, but that certainly was not proposed. And again I'm persuaded by the umbrella
28 argument that Mr. Gardner makes that there is a consistency in the master plan and the
29 zoning, and what -- what the consecutive Councils intended to have done there.

30
31 Barbara Sears,
32 I think this was countermanded or rebutted by the discussion related with Mr. Murray
33 that they considered it to be -- remain as the commercial use and they didn't specifically
34 consider this property beyond the existing commercial use. I would agree with you that it
35 could have happened, but I think the evidence is it strong that it didn't happen.

36
37 Council President Leventhal,
38 Okay. I see no more lights. The vote is on the motion by Ms. Floreen to concur with the
39 hearing examiner's recommendation to deny the application. Those in favor of the
40 motion...

41
42 Multiple Speakers,
43 Roll call.

44
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for its form or content. Please note that errors and/or omissions may have occurred.



December 13, 2005

1 Council President Leventhal,
2 Oh, it's a roll call vote.
3
4 Council Clerk,
5 Mr. Denis.
6
7 Councilmember Denis,
8 Yes.
9
10 Council Clerk,
11 Ms. Floreen.
12
13 Councilmember Floreen,
14 Yes.
15
16 Council Clerk,
17 Mr. Subin
18 Councilmember Subin,
19 Yes.
20
21 Council Clerk,
22 Mr. Silverman.
23
24 Councilmember Silverman,
25 Yes.
26
27 Council Clerk,
28 Mr. Knapp
29 Councilmember Knapp,
30 Yes.
31
32 Council Clerk,
33 Mr. Andrews
34 Councilmember Andrews,
35 Yes.
36
37 Council Clerk,
38 Mr. -- he's not here. Ms. Praisner.
39
40 Councilmember Praisner,
41 Yes.
42
43 Council Clerk,
44 Mr. Leventhal.

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December 13, 2005

1
2 Council President Leventhal,
3 No. Mr. Perez are you voting?
4
5 Councilmember Perez,
6 I don't care.
7
8 Council President Leventhal,
9 Okay, the vote is on a motion to concur with the hearing examiner's recommendation,
10 it's a roll call vote.
11
12 Councilmember Perez,
13 Where are we?
14
15 Councilmember Praisner,
16 We're all done, except for you.
17
18 Council President Leventhal,
19 Everyone has voted except for you.
20
21 Councilmember Silverman,
22 You're not the swing vote.
23
24 Council President Leventhal,
25 You can either vote yes or you can vote no. Those would be your two choices.
26
27 Councilmember Perez,
28 I can't abstain, then I vote no.
29
30 Barbara Sears,
31 Thank you for your...
32
33 Council President Leventhal,
34 Vote is 7-2, the hearing examiner's recommendation is agreed to.
35
36 Multiple Speakers,
37 [applause]
38
39 Council President Leventhal,
40 Okay, this takes out of District Council Session into Legislative Session, Day 39. We
41 have a Legislative Journal before us for approval.
42
43 Councilmember Floreen,
44 Move approval.

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1
2 Council President Leventhal,
3 Motion is made and seconded without objection. The Legislative Journal is agreed to.
4 Introduction of bills. Bill 43-05, Weapons Restrictions - Deer Management, sponsored
5 by Mr. Knapp. Public hearing is scheduled for January 24th at 1:30 pm.
6
7 Councilmember Silverman,
8 ...control bill?
9
10 Council President Leventhal,
11 Bill's -- okay, no comments on that, Mr. Knapp? Bill 44-05, Motor Vehicles Parking
12 Violations sponsored by Councilmember Subin and Praisner. Public hearing is
13 scheduled January 24th at 1:30 p.m. Call of bills for final reading Expedited Bill 29-05,
14 Condominiums, Conversion of Rental Housing. The PHED Committee recommends
15 approval.
16
17 Councilmember Silverman,
18 Chairman Silverman. We're just back here for I think Councilmember Floreen's
19 amendment as well as two clarifying amendments; is that correct? That's correct. I'm
20 going to turn this over to Kathleen.
21
22 Kathleen Boucher,
23 Okay, at the December 6th meeting of the Council...
24
25 Council President Leventhal,
26 Yeah, we need to quiet down, take conversations outside the room, please. Kathleen.
27
28 Kathleen Boucher,
29 At the December 6th meeting of the Council the Council adopted three amendments
30 that were recommended by the PHED Committee for this bill but also discussed
31 substantial changes that were raised by Councilmember Floreen and Councilmember
32 Floreen was concerned about the situation where a nonprofit entity running a program
33 for disabled individuals would have a staff person residing in a dwelling unit. And the
34 issue there was whether the income of that staff person would be considered household
35 income. The amendment that's on lines 10 through 18 -- in lines 10 through 18 on Circle
36 2 addresses that concern and specifically amends the definition of annual income to
37 provide that the income of that kind of a staff person is not included for the purposes of
38 calculating annual income of a household.
39
40 Councilmember Praisner,
41 I'm okay with that, I don't know if you are...
42
43 Kathleen Boucher,

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1 There are two other clarifying amendments that the -- well, technical clarifying
2 | amendments that are recommended by Associate County Attorney, Vicki Gaul. The first
3 one relates to legislative findings. State law allows counties to create three-year
4 extended leases if they make a legislative finding of rental emergency. That was done
5 when the County's extended lease law was first created years ago. The Council made
6 similar findings in July of this year when it amended the County's extended lease law.
7 | It's questionable to me whether State law requires that every time we amend or in any
8 small or big fashion the County's extended lease law we need to make those kinds of
9 legislative findings, but it's the most conservative and cautious way to go. So Council
10 staff would recommend that Council adopt the amendment that's on lines 121 through
11 129 on Circle 6. Another -- this really is a type of technical amendment. Recommended
12 | by Associate County Gaul -- Associate County Attorney Vicki Gaul. It's to clarify in our
13 County Code that a notice of intent to convert, which is required by state law whenever
14 a developer wants to convert a rental housing unit to condominiums, must also specify
15 the rights created by County law. And the County has that in regulation. We have
16 County regulations that's say it has to include rights created by County law. This puts it
17 in statute, codifies it, and so Council staff would recommend including the language that
18 is set forth in lines 108 through 110 on Circle 6. And those are the amendments --
19 proposed amendments.

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20
21 Council President Leventhal,
22 Ms. Praisner.

23
24 Councilmember Praisner,
25 I'm okay with what Nancy is proposing. Obviously you're always going to have a
26 | situation where somebody's specific characteristics of how a housing unit occupied
27 would be affected, but I don't have any problem with what she is suggesting. We can
28 continue to modify this as we find issues but -- and as with the Local Small Business
29 Reserve Program, they're going to be folks whose unique situations fall outside or
30 inside. The basic issues is to deal with income and certainly most folks who have a
31 disability are usually going to be covered in one way or another through an income
32 situation. But when you talk about disability in the broadest sense of the word which are
33 we the -- there are folks who are very gainfully employed and can be accommodated
34 and can deal with the rental situation issues before someone who may have no
35 disability but has no income and that was the whole intent of the legislation in the first
36 place. So I'm okay with the amendment.

37
38 Council President Leventhal,
39 Mr. Silverman?

40
41 Councilmember Silverman,
42 My light's on just as Chair.

43
44 Council President Leventhal,

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December 13, 2005

1 Mr. Denis.
2
3 Councilmember Denis,
4 Just a question for staff. Could you please tell me the status of any prefiled legislation in
5 Annapolis on this? And also whether or not any such legislation would include the
6 Pavilion?
7
8 Kathleen Boucher,
9 I know of at least one -- I don't know about prefiled Councilmember Denis -- I do know
10 that Senator Frosh and Delegate Feldman had been working on a bill and had
11 circulated a draft that would address the issue of the definition of disabled person for the
12 purpose of life tenancies that whether it's actually been prefiled I'm not sure. But they
13 had circulated a draft and folks were looking at it. Senator Grosfeld has another bill that
14 deals with condominiums. But neither of those had a provision that specifically clarified
15 how it applied in terms of retroactively or, you know, whether there's a grandfather
16 clause. So that -- I think that depends on what is put in the State -- any State legislation.
17
18 Councilmember Denis,
19 Right, I mentioned the Pavilion only because of Council's legislation in that. But I did
20 mean any retroactivity provision whether or not any legislation would apply retroactively.
21 Is that a legal issue that has to be resolved or is that clear or unclear or what?
22
23 Kathleen Boucher,
24 That would definitely raise legal questions about depriving individuals or entities of
25 property without due process and some other issues. But, as I say, you don't know how
26 State law is addressing it, in this bill there isn't a grandfather clause.
27
28 Councilmember Denis,
29 Okay, so beyond the policy issue of what the fate of the legislation might be there may
30 be an Attorney General's opinion requested on that point or not?
31
32 Kathleen Boucher,
33 I anticipate that issue to be discussed in Annapolis. I know Senator Frosh's office has
34 contacted me to chat about that particular issue. It would require one of the legislators
35 to ask the Attorney General's office for an opinion.
36
37 Councilmember Denis,
38 Thank you very much.
39
40 Council President Leventhal,
41 Ms. Floreen.
42
43 Councilmember Floreen,

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1 | Thank you. Well, I wanted to express my appreciation to the sponsor for this for
2 accepting the additional language that Kathleen worked out for me to deal with the issue
3 of nonprofit staff on-site and I appreciate that there may be other circumstances. That
4 makes it better, I'll just say, I am not going to support this. I know it's well-intentioned but
5 what this does is flip the priority system, and think that in the world of unintended
6 consequences what it does is put disabled individuals at a disadvantage and once we
7 get past the Pavilion situation, in particular. So I appreciate that at least in that situation
8 the income associated with a caretaker for a nonprofit would not be associated with that
9 group, that group still now is in the fourth category as opposed to the third. And I'm not
10 sure that those are the people who already have enough challenges to face, that they
11 should be disadvantaged further. I appreciate the effort, I don't think it goes far enough.
12

13 Council President Leventhal,

14 Okay. We're ready to vote on Expedited Bill 29-05. It's a roll call vote.
15

16 Council Clerk,

17 Mr. Denis.
18

19 Councilmember Denis,

20 Yes.
21

22 Council Clerk,

23 | Ms. Floreen
24

25 Councilmember Floreen,

26 No.
27

28 Council Clerk,

29 Mr. Subin.
30

31 Councilmember Subin,

32 Yes.
33

34 Council Clerk,

35 Mr. Silverman.
36

37 Councilmember Silverman,

38 Yes.
39

40 Council Clerk,

41 Mr. Knapp.
42

43 Councilmember Knapp,

44 Yes.

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Council Clerk,
Mr. Andrews.

Councilmember Andrews,
Yes.

Council Clerk,
Mr. Perez.

Councilmember Perez,
Yes.

Council Clerk,
Ms. Praisner.

Councilmember Praisner,
Yes.

Council Clerk,
Mr. Leventhal.

Council President Leventhal,
Yes. The bill passes 8-1.

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Councilmember Praisner,
Thank you, Elizabeth.

Council President Leventhal,
Expedited Bill 34-05. South Germantown Recreation Park - Tennis Center - Lease
Amendments. There are no lights on this bill. It's a roll call vote.

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Councilmember Silverman,
Wait.

Council President Leventhal,
Oops, wait. I turn around and the lights all go on. Mr. Knapp.

Councilmember Praisner,
You're inviting them.

Council President Leventhal,
Yeah.

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Councilmember Knapp,

Well, I'd ask for a postponement until today and I appreciate Mr. Mooney getting me in touch with the proprietor or the applicant and they provided some information. Generally I think this is a good use of what we want to put on the Soccerplex facility. I'm still a little concerned because the data that they're still utilizing is based on information that was done in April, 2000, and August, 2001, and I was under the impression that Potomac had done additional market research, and from what I can tell the numbers were still valid but didn't really actually look at the market very much. And so I'm just -- and even in their analysis, the competitive analysis didn't take into account other competitors that are currently in the market. They looked at as a key competitor being down at the Rio facility and Healthtrax has been operating for the last three years in the Germantown market. I don't know if that does or doesn't have any impact on what the potential market will be for what the applicant's proposing but I would have thought it would at least merited some consideration. It didn't appear to be on the radar screen. It's not enough to hold this up. I just would like to have a better understanding of how they're making decisions. They said they modified the notion of doing the tennis courts because they wanted to do other things because they think the market trends are there but none of the information they provided shows that. Again, my gut reaction they're probably moving in the right direction. But I'm not sure on what they're basing their information. And given what that I gave us, it's still not clear. I would encourage us to -- I'd like to follow up with them further to see how they're making the decisions and how they're going to react to the market forces there because what that he the have given us doesn't show it.

Bill Mooney,

Mr. Tighe is here if you'd like to hear directly from him. I asked him to come today so he could speak further to the issues.

Councilmember Knapp,

Thanks. Pleasure to see you.

Kevin Tighe,

Pleasure to be here. Pursuant to Mr. Knapp's question we are intimately familiar with Healthtrax. And the concept of Healthtrax is completely different than the Germantown Athletic Club and Spa as follows. Healthtrax is a concept that initiated years ago in the State of Massachusetts where I'm originally from. The idea is to take a small facility and associate it with a group of doctors on the second floor, and the central purpose of Healthtrax is primarily dealing with rehab and secondarily dealing with people that want to come in and use cardiovascular equipment. The central purpose of the Germantown Athletic Club and Spa, a facility that is approximately four times large near square footage than Healthtrax or the Bally's or the Rio, which are really the only competitors in the marketplace today with the exception of a facility called Aspen Hill Racquet and Tennis Club which would be perhaps, if at all, the more comparable in utilization of services that we're going to provide at Germantown. The Germantown concept is a

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1 facility that will provide indoor tennis and I'd like to stop for a moment and state that
2 when this was first proposed back in 2000 when we responded to the RFP there was a
3 focus primarily on tennis on the first floor and the building would be two stories with
4 cardiovascular on the second floor. Rolling forward between 2000 and 2005, the cost of
5 steel, the cost of construction, what happened in the dynamics in the marketplace and
6 raising money mandated that we relook at the demographics and relook at the concept.
7 The concept as we envision it now is one floor not six indoor tennis courts but seven,
8 configured as four under a steel roof and three under the bubble which will be adjoining
9 the facility itself. We then looked at the demographics of growth between 2000 and
10 2005 and as Potomac has pointed out the market as we all know has just -- and I would
11 say that the best example of the market growth, and I'm sure you're all familiar with it is
12 the article that appeared November 25 in the Metro Section of the "Washington Post"
13 which said that if Germantown were a city it would be Maryland's second largest next to
14 Baltimore, stating how much growth has taken place. What we knew we needed is far
15 more additional square footage dedicated to cardiovascular and the programs that are
16 associated with cardiovascular itself. Right now you're looking at a footprint that is
17 93,000 square feet, seven tennis courts, a capacity for cardiovascular yoga, aerobics, et
18 cetera, and locker space that will allow the dynamics of having programs that the family
19 itself -- and this the difference between Healthtrax -- the family itself, mom and dad can
20 come to the Germantown club, Dad's playing tennis, Mom's doing yoga, and the
21 children are doing other things. They all can then reconvene and go to the restaurant
22 and have something in the restaurant. So we have looked at the dynamics. Potomac,
23 Inc., when they were asked by staff at Park and Planning to update the reports that
24 were done to date relied primarily upon all of the prior work they have done for
25 Montgomery County demographics via Germantown and were able to look at the
26 application to the facility as it exists in concept today.

27
28 Councilmember Knapp,
29 Given the modification to the lease amendments, how soon are you beginning to move
30 ahead with the actual project itself?

31
32 Kevin Tighe,
33 We would anticipate with approval of the lease according to Hefner and Weber, which
34 are the design/build company putting a shovel in the ground within six to seven months,
35 hoping that because the permitting process will be jointly moving forward between the
36 landlord, Montgomery County Park and Planning, and ourselves that we would not get
37 bogged down with a lot of permitting time that would delay the project. Fingers crossed.

38
39 Councilmember Knapp,
40 We'll have to wait and see on that one. Okay. No, thank you very much. I appreciate it
41 and I thank you for getting me the information.

42
43 Kevin Tighe,
44 I appreciate that, thank you.

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Council President Leventhal,
Ms. Floreen.

Councilmember Floreen,
Thank you. I had asked questions last week about this, because I hadn't been involved in it previously and I have to say I still don't see any answers. Bill, what mechanisms are in place to ensure that this facility will be affordable to the average person? Or to the public?

Bill Mooney,
When we did the request for proposals on this affordability in our view was to be measured as to would people be able to access the tennis facility for the same types of costs that they could access the other facilities that we operate in the other parks. And so it is benchmarked in effect against Cabin John.

Councilmember Floreen,
Where does it say that? Does it say that somewhere in the lease?

Bill Mooney,
In terms of the...

Councilmember Floreen,
Benchmarking. Yes.

Bill Mooney,
To be able to walk in off the street and use the facility on what we call "spot time" the prices will be comparable.

Councilmember Floreen,
Where does it say that? Does it say that somewhere in the lease?

Bill Mooney,
I believe it does. I'm not sure can I put my hand on that.

Councilmember Floreen,
Well, it's that kind of thing that I was concerned about. I was even more concerned about it when I realized the name is "Athletic Club and Spa" which suggests a more elaborate program which may be desirable and marketable, but basically is being underwritten by the public here to the extent that we're making the land available. So I wanted to understand public accessibility and I did also want to understand public exposure on this facility. Do you have any answers on those points I asked last week?

Bill Mooney,

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1 Yes, and in terms of the accessibility, again, for the -- you'll be able to go in there and
2 play at the same rates you can play at Cabin John.

3
4 Councilmember Floreen,

5 But, again, that's true if it's that's what this lease said. I didn't see it in here. But I didn't
6 read every word.

7
8 Mike Faden,

9 There is reference on Circle 55 to a Schedule of Charges set forth in Exhibit 3 but

10 Exhibit 3 is not attached and I'm not sure if that exact exhibit actually has been drawn
11 up yet.

Deleted: exhibit

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12
13 Councilmember Floreen,

14 Well, I would ask there be a provision added that made that point crystal clear,
15 somewhere.

16
17 Bill Mooney,

18 We will do that. I mean, that has always been the understanding and I I'm not going to
19 make any assertion that's what was in the RFP but I believe we did say at the time that
20 it had to be comparable in terms of those costs. And then the other thing I was going to
21 point out is that if you play tennis twice a week at this facility it's actually less expensive
22 if are you a member here than if you try to play hourly at one of our other facilities. So
23 that is in terms of the accessibility.

24
25 Councilmember Floreen,

26 Well, right. You add it all up and divide it out and it works or not depending upon the
27 need. Many of us go to facilities of this nature and are well familiar with it, but this is one
28 on public land. That's the distinction, I think. So I would ask that that issue of public
29 accessibility at rates comparable to other public facilities be made an express term of
30 this amendment process if it isn't already. Is that already in Mr. Teague?

Deleted: a

31
32 Kevin Tighe,

33 Tighe, Councilwoman Floreen.

34
35 Councilmember Floreen,

36 Tighe, sorry.

37
38 Kevin Tighe,

39 That's quite all right, I'm called a lot of things, but Tij, Tig Tighe, that's quite all right,
40 thank you. If I may take 30 seconds, a lot of time was spent during the RFP process
41 presentations being made before Park and Planning and we were asked to ensure, and
42 it is in our RFP response, the gentlemen mentioned Exhibit 3 it does say in the praecipe
43 of the lease that the RFP response is incorporated herein.

44
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Councilmember Floreen,
Yeah, well. What does it say.

Kevin Tighe,
Let me tell what you it says. It says as far as accessibility we would have a court available for walk-on play, not on a dues basis, that would be the equivalent of the Cabin John rates. We examined the Cabin John rates and we drew the following conclusion and I'll share it with you right now, because I just made a phone call while we were waiting to find out what the current Cabin John rates are today. The Cabin John rates for one hour of tennis is \$30. A couple that would join this facility and has full use to all of the cardiovascular and related programs would be paying \$155 per month or \$77 per individual. There will be no court fees for individuals that are members of this club in addition to the dues. The dues structure that I laid forth in the RFP which are now five years old are still the dues structures which I had told Park and Planning I will commit to for a period of two years upon opening. Now in the interim all other rates of facilities like Rio or Bally's have -- Aspen Hill -- have certainly over the last five years increased on an annualized basis. The point is that if you do the math, if someone went and played twice a week at Cabin John it would cost them \$240 a month in tennis fees versus they could play as much as they want in "flights" and related activities for \$77 each at the Germantown facility. So predicated upon that, there is a rate structure here that is very affordable and intended to provide access to a very broad base of economic individuals that would wish to join this type of facility in the Germantown complex.

Councilmember Floreen,
Did you say that this is a two-year commitment.

Kevin Tighe,
Yes, it is.

Councilmember Floreen,
Was that your understanding Mr. Mooney?

Bill Mooney,
Terms of the actually monthly fees,

Councilmember Floreen,
That's obviously a private...

Bill Mooney,
In terms of the compatibility to Cabin John on a walk-in basis that's at all times, their rates may change...

Councilmember Floreen,

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1 That will be a permanent commitment?
2
3 Kevin Tighe,
4 That's a permanent commitment.
5
6 Councilmember Floreen,
7 Is that your understanding, Mr. Tighe?
8
9 Kevin Tighe,
10 Yes, it is. Yes, it is.
11
12 Councilmember Floreen,
13 I'd just like to have a letter of agreement or something that spells that out if it's not
14 crystal clear in that attachment to the document if that would be possible.
15
16 Kevin Tighe,
17 Sure.
18
19 Councilmember Floreen,
20 Because I think that's important. Thank you.
21
22 Kevin Tighe,
23 Also in the lease agreement going forward it is a commitment that no rates can be
24 increased more than 10% per year without the Park and Planning/landlord's approval.
25 You'd be talking \$7 if you're talking this \$155 a month divided by a husband and wife or
26 two individuals. So there's a cap and oversight in the lease structure that does govern
27 increases going forward.
28
29 Councilmember Floreen,
30 Well, that's helpful to know. I guess the other issue Mr. Mooney, was that I had had
31 previously is what is the -- what kind of indemnification agreement is included in all of
32 this? Is there some -- is there an issue with respect to the County's exposure for liability
33 for long term maintenance anything of that nature here?
34
35 Bill Mooney,
36 They're required to carry full liability insurance and all the coverages in terms of building
37 maintenance. We require a sinking fund for repairs during the life of the lease.
38
39 Councilmember Floreen,
40 And who is responsible for maintenance?
41
42 Bill Mooney,
43 The tenant.
44

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December 13, 2005

1 Councilmember Floreen,
2 And we will have authority to make sure it's up to our standards.

3
4 Bill Mooney,
5 Yes, we have the authority to inspect and we have the authority to request maintenance
6 and corrections within three years of the end of the lease using the sinking fund at the
7 time.

8
9 Councilmember Floreen,
10 Okay. Thanks.

11
12 Council President Leventhal,
13 Mr. Subin?

14
15 Councilmember Subin,
16 Thank you, Mr. President. Not intending to out recreate Mr. Silverman.

17
18 Councilmember Silverman,
19 No one can out recreate me.

20
21 Multiple Speakers,
22 [INAUDIBLE]

23
24 Councilmember Subin,
25 I just wanted to thank him for making this happen when we first did the Soccerplex I
26 think was absolutely clear that we wanted more than just soccer and to date it's been
27 fundamentally soccer and now it looks like we're finally starting to move ahead and see
28 some of the other provisions start to occur.

29
30 Council President Leventhal,
31 Ms. Praisner.

32
33 Councilmember Praisner,
34 Well, I appreciate the information. I do think, though, in the future that when the Council
35 receives documents, and I know we had the public hearing on this in November, but I
36 think we need everything, including the attachments. I think we need answers to
37 questions in writing ahead of time, and I think we need on a -- I guess a PHED
38 Committee perspective since we have nothing else to do to continue to look at the
39 private/public partnership issues which I think are ongoing and raise continual
40 questions. Thank you.

41
42 Council President Leventhal,
43 Mr. Andrews.

44
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December 13, 2005

1 Councilmember Andrews,
2 Thank you, I'm very glad that Mr. Tighe was here today and I think this is a welcome
3 addition to the County and I've worked for years to build a majority tennis caucus here
4 and we're getting close. And Mr. Subin's an aspiring -- aspiring member of the caucus.
5 Aspiring member and Mr. Knapp counts and Mr. Perez has played a fair amount of
6 tennis and we're looking for the fifth. But my experience in playing on the indoor courts
7 in the County and that they're in high demand. Cabin John is a moneymaker. It's an
8 enterprise facility, it makes money for the County. We can bubble those well -- as well,
9 and the Quince Orchard indoor courts are well-used. So I think you'll find the demand is
10 there. I think -- I think the commitment to keep the rates on the court that's open to the
11 public on a regular basis at the rates that are at Cabin John is important. Cabin John
12 has what you might call congestion pricing, it varies depending on the time of the day.
13 So it's cheaper to play at 5:00 a.m. or 6:00 a.m., not that I would know...

14
15 Bill Mooney,
16 And the price as Kevin was quoting are the prime time rates.

17
18 Councilmember Andrews,
19 But would your prices follow the same model in terms of variation.

20
21 Kevin Tighe,
22 Yes.

23
24 Councilmember Andrews,
25 Okay. All right. You probably need to do that anyway.

26
27 Kevin Tighe,
28 Yes.

29
30 Councilmember Andrews,
31 To get people out at 5:00 or 6:00 a.m.

32
33 Kevin Tighe,
34 It's to our advantage to do that because frankly, what we've found -- I've been the owner
35 and operator of McLean "Raq" and Health Club for 32 years, it's highly successful. The
36 point I'm going to make is that 80% of the people that come into the McLean and utilize
37 the tennis court and look at the rates say, "Why don't I want to be a member?" So it's an
38 advantage for us to have our door open to the public that are not members, per se, but
39 are looking for the experience and then want to become a member. It's a two-way street
40 that makes sense.

41
42 Councilmember Andrews,
43 Well, my backhand volley cross court drop shot needs work so I look forward to working
44 on it up there. Thank you.

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December 13, 2005

1
2 Kevin Tighe,
3 Look forward to it. Thank you.
4
5 Council President Leventhal,
6 Okay this is a roll call vote.
7
8 Council Clerk,
9 Mr. Denis.
10
11 Councilmember Denis,
12 Yes.
13
14 Council Clerk,
15 Ms. Floreen.
16
17 Councilmember Floreen,
18 All right.
19
20 Council Clerk,
21 Mr. Subin?
22
23 Councilmember Subin,
24 Why not?
25
26 Council Clerk,
27 Mr. Silverman.
28
29 Councilmember Silverman,
30 Yes.
31
32 Council Clerk,
33 Mr. Knapp.
34
35 Councilmember Knapp,
36 Yes.
37
38 Council Clerk,
39 Mr. Andrews.
40
41 Councilmember Andrews,
42 Yes.
43
44 Council Clerk,

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December 13, 2005

1 Mr. Perez.
2
3 Councilmember Perez,
4 Yes.
5
6 Council Clerk,
7 Ms. Praisner.
8
9 Councilmember Praisner,
10 Yes.
11
12 Council Clerk,
13 Mr. Leventhal.
14
15 Council President Leventhal,
16 Yes. It carries unanimously. Bill 33-05, Silver Spring Parking Lot District Amendment.
17 The T&E Committee recommends approval. Chairwoman Floreen.
18
19 Councilmember Floreen,
20 We'll be glad to know that Bond Counsel is able to allow this proposal to go forward so
21 the Committee stands by its recommendation to amend the Silver Spring Parking Lot
22 District accordingly with a clear direction that we do not promise a parking lot in this
23 quadrant in this exact quadrant of Silver Spring.
24
25 Council President Leventhal,
26 Mr. Perez?
27
28 Councilmember Perez,
29 I was stunned that the Bond Counsel did not have a issue with this and did it in less
30 than a week. So I want to thank them for their swift action and I look forward to moving
31 forward on this.
32
33 Council President Leventhal,
34 Here we go, This is another roll call. Oh, does Ms. Floreen -- no, Ms. Floreen is
35 exercising her better judgment and refraining from saying anything further. Roll call
36 vote.
37
38 Council Clerk,
39 Mr. Denis.
40
41 Councilmember Denis,
42 Yes.
43
44 Council Clerk,

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December 13, 2005

1 Ms. Floreen
2 Councilmember Floreen,
3 Yes,
4 Council Clerk,
5 Mr. Subin.
6
7 Councilmember Subin,
8 Yes.
9
10 Council Clerk,
11 Mr. Silverman.
12
13 Councilmember Silverman,
14 Yes.
15
16 Council Clerk,
17 Mr. Knapp.
18
19 Councilmember Knapp,
20 Yes.
21
22 Council Clerk,
23 Mr. Andrews?
24
25 Councilmember Andrews,
26 Yes.
27
28 Council Clerk,
29 Mr. Perez.
30
31 Councilmember Perez,
32 Yes.
33
34 Council Clerk,
35 Ms. Praisner.
36
37 Councilmember Praisner,
38 Yes.
39
40 Council Clerk,
41 Mr. Leventhal.
42
43 Council President Leventhal,

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1 | Yes, the bill passes unanimously. Expedited Bill 37-05: Taxicabs, Fees, also a positive
2 | recommendation from the T&E Committee. Chairwoman Floreen.

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3
4 | Councilmember Floreen,

5 | Thank you, Mr. President. In our ongoing saga with the taxi industry the Committee
6 | recommends to the Council -- actually three coordinated actions. One to approve
7 | Expedited Bill 37-05, which gives us the authority to set by resolution fees to be charged
8 | for administering the taxi program, a resolution that sets the fees with a revised table on
9 | Circle 7, and a resolution disapproving the Executive Regulation, 8-05. The last item is
10 | what has triggered this effort. We have been attempting to work out with County
11 | Executive staffs -- County Executive and staff since last summer a fair plan for
12 | implementing Executive's initiative on taxicab regulation which we labored over so
13 | intensively last year. We heard significant complaints from the industry, though, as to
14 | the precise numbers proposed, asked the County Executive several times if they could
15 | modify their fees proposed in order to accommodate the concerns of the industry, and
16 | our concern frankly that we were going too far in terms of the financial demands on an
17 | industry that complains that it cannot find drivers. Customer service being our primary
18 | objective here we feel that the proposal that the Committee puts before the full Council
19 | will address both the Council's interest in fair regulation, the community's interest in
20 | reliable service, and everyone's objective to be relatively cost effective. The County will
21 | end up having to assist in this program at least initially, but we think it's a fair start to a
22 | process that we have made extremely complicated, burdensome, and is still in the
23 | process of being fully defined by County Executive staff. So the -- Glenn's and
24 | Kathleen's memo is before you with respect to the details. But the Committee has spent
25 | a fair amount of time on this and while we were not desperate to take on this charge
26 | here of assigning these fees. It seemed to us there was little alternative given the
27 | considerable concern that we heard this summer and this fall from the industry. So we
28 | think we found a fair resolution that balances the interest of everyone involved. It's not
29 | perfect, of course, but gets us closer to where we need to go than we were previously.
30 | So that's the Committee's collection of recommendations to approve -- let's
31 | see what is it? Number 9 is the bill, Number 10 the is resolution to set the fees, and
32 | Number 11 on our agenda is to disapprove the Executive Regulation.

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33
34 | Council President Leventhal,
35 | Ms. Praisner?

36
37 | Councilmember Praisner,

38 | Well, I'm certainly in support of the Council having an authority and ability to set the
39 | fees. I'm also in support of perhaps easing into the fee structure. My problem gets to the
40 | fact that it looked like by my calculations the taxpayers would be picking up half million
41 | dollars in costs and I have a problem with that piece. I don't have a problem with our
42 | setting fees and tailoring a program to match those fees. I don't have a problem with
43 | some modest taxpayer contribution initially. I have a problem with a half million dollars
44 | which is by my calculations looks pretty darn close to what it would be. That's too much

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1 of a taxpayer contribution to this program from my perspective. So I think the question is
2 one of having the T&E Committee review what are the costs in the budget associated
3 with this program to kind of bring it closer in line to the fees we're setting. And I know we
4 didn't disappropriate but I sure as heck, if I were the County Executive, wouldn't want to
5 spend money taxpayer money on something that we thought fees would be able to
6 generate. So that's the concern that I have and I'm not sure I understand how the T&E
7 Committee proposal resolves that issue. The fees may be too high. The Executive and
8 the Council may be in standoff on that, but then we have to look at the budget that
9 we've proposed for that program and try to put it closer in sync with the revenue that we
10 will generate it seems to me.

11 Councilmember Floreen,

12 Let me just say that those are indeed concerns and very valid ones and certainly ones
13 that I think drove the County Executive's recommendation on this. But the -- I think
14 we're in between a rock and a hard place here in terms of trying to put into place a very
15 stringent set of requirements. And I know that there's some interest in revisiting some of
16 those requirements before they actually go into effect. We'll see what happens there.
17 But the fact remains that we were quite convinced by what we heard that the costs --
18 that the charge that's were proposed were not tolerable and were not reasonable. So
19 we strove to find a balance and I think I can't speak for my colleagues, but I think that
20 my feeling was that if government was going to take on this very aggressive role, at
21 least at the beginning, we needed to we were going to have to be in the position of
22 underwriting a little bit more of it than we had hoped to do initially.

23 Council President Leventhal,

24 Yeah, Just as a member of the Committee I'll add. I think we got a lot of advice from a
25 lot of different places in crafting this taxicab legislation and the final product is the result
26 of an awful lot of cooks and it's not at all clear to me that the effect that we sought,
27 which was to increase competition and improve customer service, that we've advanced
28 the ball in that direction one inch by the passage of this legislation. So since I don't
29 believe customer service has improved and I don't believe competition has increased
30 and I don't have a lot of confidence in the regulatory framework and the staffing that
31 underlies a bill that you know we passed somewhat out of fatigue. I mean we had
32 Committee session after session, after session. We had outside experts we heard from
33 industry from the Executive Branch and the product I think has not achieved its goals. I'll
34 be very happy in the T&E Committee to follow-up on Ms. Praisner's suggestion we take
35 a look at the staffing levels since I'm not sure that the staff that underlies the bill -- if the
36 staff that's necessary to carry out a bad bill is in question, you know, I think it's we
37 should ask whether we have the appropriate staff since the bill itself I think is not
38 achieving the purposes that it was intended to achieve. We'll take a look at the staffing
39 levels -- well, certainly I will. Ms. Praisner.

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40 Councilmember Praisner,

41 Well, I wasn't talking about staffing. I was talking about the cost of the program.

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1
2 Council President Leventhal,
3 Right. Which is mostly staff.

4
5 Councilmember Praisner,
6 Well, I don't know whether it's staff or not but I'm not -- I don't want -- I don't want my
7 comments to leave a suggestion that I'm criticizing staff. My comment was only that I
8 | thought this should be closer to a fee-supported program and if there are outreach or
9 whatever efforts or costs the staff is doing something or has been asked to do
10 something and I -- it was probably the most difficult piece of sausage to swallow as we
11 make law and as you know the analogy is that law is like making sausage you don't
12 want to watch it being done. I'm not sure that we like the taste of this having been made
13 either. And I'm not uncomfortable with the concerns associated with the high fees and
14 obviously we still I'm still getting complaints and we're still having problems. My concern
15 is that picking numbers that sound reasonable to the taxicab industry needs cooperation
16 from a standpoint of then what you get for the money and what the structure of the
17 program is. And that's my concern. Maybe it's closer to \$300,000 not \$500,000. To me
18 | it's big bucks. And it needs to have some relationship between the fees and the program
19 or what we said the program should pay for, and I don't see that right now. I think the
20 Council should be more involved in it that's not my objection. And obviously there's a
21 standoff between the Executive Branch and the T&E Committee and the Council
22 obviously as well. And I support the approach that has us having the authority to set the
23 fees. My concern is the outcome that has the taxpayer picking up the bill.

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24
25 Council President Leventhal,
26 Chairwoman Floreen, did you have further comments.

27
28 Councilmember Floreen,
29 No, I don't.

30
31 Council President Leventhal,
32 Okay this requires a roll call vote on Expedited Bill 37--05.

33
34 Council Clerk,
35 Mr. Denis.

36
37 Councilmember Denis,
38 Yes.

39
40 Council Clerk,
41 Ms. Floreen.

42
43 Councilmember Floreen,
44 Yes.

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1
2 Council Clerk,
3 Mr. Subin.
4
5 Councilmember Subin,
6 Yes.
7
8 Council Clerk,
9 Mr. Silverman.
10
11 Councilmember Silverman,
12 Yes.
13
14 Council Clerk,
15 Mr. Knapp.
16
17 Councilmember Knapp,
18 Yes.
19
20 Council Clerk,
21 Mr. Andrews.
22
23 Councilmember Andrews,
24 Yes.
25
26 Council Clerk,
27 Mr. Perez.
28
29 Councilmember Perez,
30 Yes.
31
32 Council Clerk,
33 Ms. Praisner.
34
35 Councilmember Praisner,
36 Yes.
37
38 Council President Leventhal,
39 Mr. Leventhal. Yes. That the bill passes unanimously. That takes us to a resolution to
40 set certain taxicab fees. If there's no further conversations those who support the
41 resolution will significant by raising their hands. Okay. Mr. Denis, Mr. Floreen, Mr.
42 Subin, Mr. Silverman, Mr. Knapp I think had his hand up, Mr. Perez and Mr. Leventhal.
43 Those opposed: Mr. Andrews and Ms. Praisner. Next item Executive Regulation 8-05
44 taxicab fees. Those in favor of the Committee's recommendation will signify by raising

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1 their hands. Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, Mr. Knapp, Mr. Perez,
2 and Mr. Leventhal. Those opposed will signify by raising their hands. Mr. Andrews and
3 Ms. Praisner. Okay, action on a resolution to set certain penalty and fee amounts -- I'm
4 sorry the vote was 7-2 on the Committee's recommendation on the Executive
5 Regulation. Resolution to set certain...

6
7 Councilmember Praisner,
8 Can I make a...

9
10 Council President Leventhal,
11 You may.

12
13 Councilmember Praisner,
14 Just a very brief comment. I think there is room between what the Executive is
15 proposing and what the Committee was proposing and a review of the budget that
16 should occur before we do fee setting.

17
18 Council President Leventhal,
19 Action on a resolution to set certainly penalty and fee amounts under the Forest
20 Conservation Law. That also is a T&E Committee matter, and Chairwoman Floreen is
21 bringing it before the Council.

22
23 Councilmember Floreen,
24 This is continuing wrap-up from last week. What we asked is that staff clarify some of
25 the language in the proposed resolution that we had in front of us to set certain
26 penalties and fees with respect to the Forest Conservation Law to more accurately
27 reflect the recommendations of the C&O Canal Stewardship Task Force, which I once
28 again thank for its participation in all of this, and I will note as a sidebar that I know that
29 there is a continuing issue that is not yet resolved with respect to the Fee In Lieu
30 situation. So agreeing that we're putting that on a different track today the language that
31 I understand Mr. Faden has clarified reflects the fact that the intention was that there
32 would be a sliding scale basically for an administrative civil penalty and as well for the
33 required planting that might be required and authorized by the County cut. So Mr.
34 Faden, have I missed anything.

35
36 Mike Faden,
37 I think that covers it.

38
39 Councilmember Floreen,
40 Again I thank the Committee and certainly Congressman Van Hollen's office for its hard
41 work in bringing this through to conclusion.

42
43 Joan Kleinman,

44 May I make a statement about...

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Council President Leventhal,
Sure. Could we hear from Councilmember Denis first.

Councilmember Denis,

Thank you, Mr. President. This item we've all been waiting for. The last item of the year before we break so in the spirit of the season I'm not going to go through the history of how we got here and I just would refer anyone to the comments I made on two other occasions, once before the Committee, and the last time where we had the bill before the Council. But I just would like to clarify one particular point. And I thank Mr. Faden for his -- the statement that he made and I realize we're voting on the resolution and I appreciate the statement. But there is a reference, a participle of a sentence that refers to the task force's revised position as a member of the task force and I have other members of the task force here, it's my clear understanding that there is -- has never been a revised position. There was a position and it was reflected in a letter from the Congressman's office to my seat mate as Chair of the Transportation Committee on November 19th, and Circle 24 reflects the issue of maximum/minimum penalty and on Circle 26, which was an addendum to the letter, specifically goes through the administrative civil penalty minimum of \$3 a square foot, maximum of \$9 per square foot. I do intend to support the resolution before us today, but I feel that as a member of the task force, it's necessary to reflect and other members are here and I would invite any comments but that the task force does reserve the option of requesting at some time in the future that we address the issue of a minimum and that there a minimum that is recommended by the task force of \$3. And the task force and here and if anyone cares to comment, Mr. President, if that's okay, I'd welcome any comments. Joan Kleinman on the Congressman's staff or anyone else.

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Council President Leventhal,
Okay, Ms. Kleinman, please introduce yourself for the technology.

Joan Kleinman,

My name is Joan Kleinman I'm the District Director for the Office of Congressman Chris Van Hollen. I want to thank the Council for taking up this resolution. I'm tempted to say we should stop meeting like this, but the expeditious timing that you've considered the bill that you approved last week and today's resolution has allowed both the Council and task force to make real progress in strengthening the provisions of the County's Forest Conservation Law. I thank you on behalf of the task force for your prompt action. As Mr. Denis said correctly the task force has not revised its position. It did have a sliding scale, it does have a sliding scale that it had proposed. But it seemed that the staff attorney with all due respect seemed to misunderstand some portions of the recommendations. But because of the confusion and our mutual interest in moving forward the task force does support the language setting the maximum today and will likely be before you before too long with a new proposal for a minimum as well as for

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1 additional substantive changes in this Forest Conservation Act. I want to thank you
2 again for taking this up. We really appreciate all you've been doing on this issue.
3
4 Council President Leventhal,
5 Okay, those in favor of the resolution will signify by raising their hands. It is unanimous.
6 Thank you very much. We are going to have the interview with our appointee -- with the
7 County Executive's appointee to the Housing Opportunities Commission at 1:30. And
8 the Council stands adjourned in regular session until January 17th, 2006.
9
10 Unidentified Speaker,
11 Happy Holidays.
12
13 Council President Leventhal,
14 Happy Holidays.
15

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